



Ennis Britton Co., L.P.A.  
Attorneys at Law

Cincinnati • Cleveland • Columbus

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## State Support Team #2

# Special Education Legal Update

- Jeremy J. Neff - [jneff@ennisbritton.com](mailto:jneff@ennisbritton.com)
- Giselle S. Spencer - [gspencer@ennisbritton.com](mailto:gspencer@ennisbritton.com)



## Agenda

- A Closer Look at the *Andrew F. Decision*
- Progress Monitoring
- LRE Decision Making / Placements
- Nitty Gritty of Discipline
- Section 504 from the Special Education Perspective



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# *Andrew F. v. Douglas County School District*

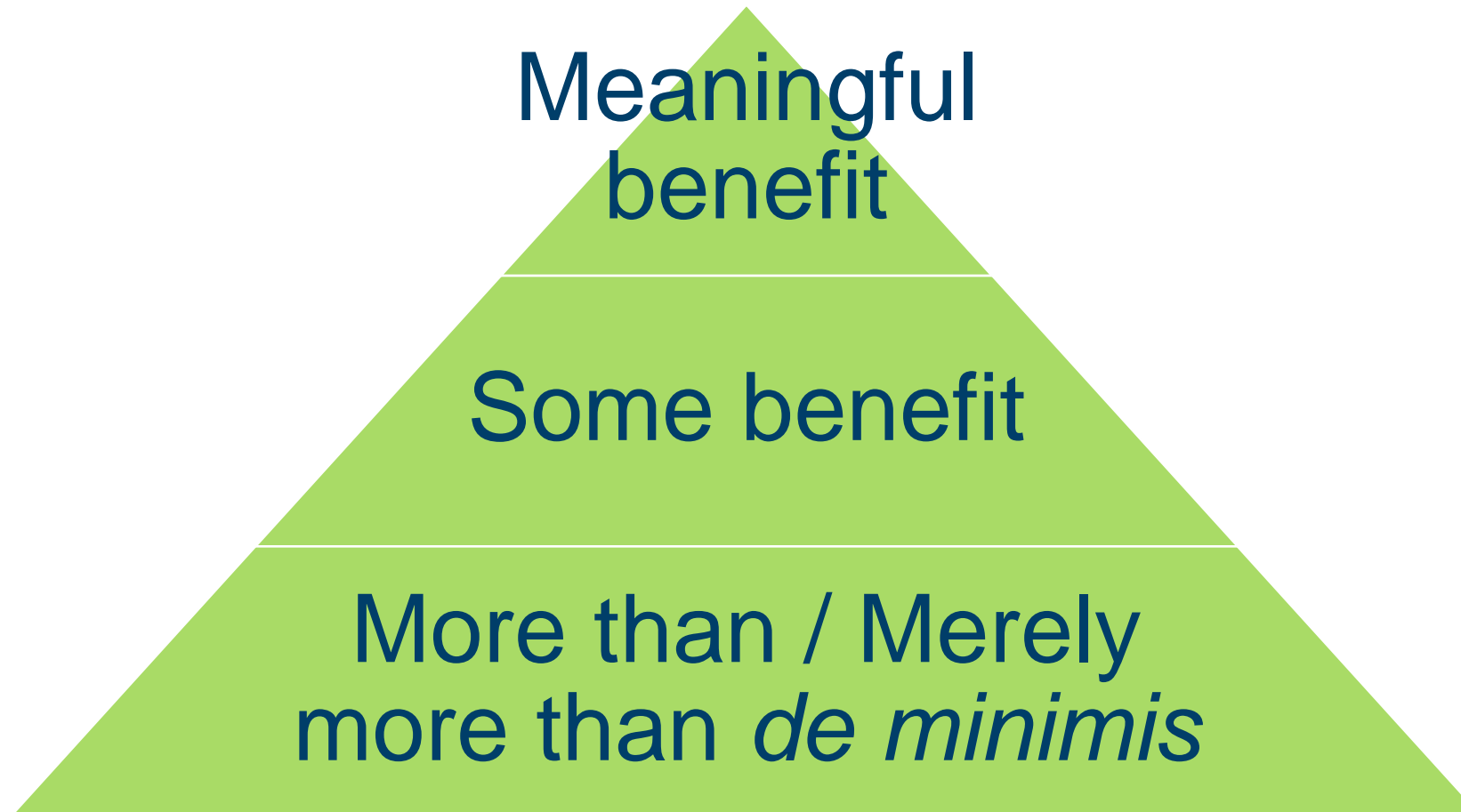
## The Issue in the *Andrew F. Case*

- What level of educational benefit must school districts provide for children with disabilities to satisfy the requirement of a free appropriate public education under IDEA?

## Previous Supreme Court Decision

- *Board of Education v. Rowley* (1982)
  - IEP must be “reasonably calculated to enable the child to receive educational benefits.”
  - Did not define the level of educational benefit
  - Federal courts have required different levels of benefit:
    - Third, Fifth, and Sixth Circuits – “meaningful benefit”
      - *Deal v. Hamilton County Board of Education* (6th Cir. 2004)
    - Others – “some benefit”
    - Still others, including Tenth Circuit – “more than *de minimis*”
  - Does not require schools to maximize the potential of any student
  - Not a Cadillac but the equivalent of a serviceable Chevrolet

## Benefit Levels (before Andrew F.)



## Andrew F. and the Static IEP

- Andrew, or Drew, is a student in Colorado with autism and ADHD.
- Drew attended public schools from preschool through grade 4.
- After a difficult 4th grade year, the district proposed an IEP for grade 5 that resembled those from past years.
- Drew's parents then enrolled him in a private school for children with autism, where he made significant progress.

## Court Proceedings

- Parent's filed complaint under IDEA, seeking reimbursement for private school tuition.
- Colorado Department of Education denied claim.
  - Referenced "some educational benefit," "some measureable progress"
- District court affirmed.
  - Referenced "at the least, minimal progress"
- Tenth Circuit Court of Appeals affirmed.
  - Concluded that Drew's IEP has been "reasonably calculated to enable [him] to make *some* progress" and therefore FAPE requirement had been met.
  - "must merely be more than *de minimis*"



## Supreme Court Decision

- “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.**”
- “Child’s educational program must be **appropriately ambitious in light of his circumstances.**”
- “Every child should have the chance to meet **challenging objectives.**”

## Supreme Court Decision

- While Drew’s parents argued that children with disabilities be provided with educational opportunities that are “substantially equal to the opportunities afforded children without disabilities,” Chief Justice Roberts noted that this would be “entirely unworkable” and “plainly at odds with” the *Rowley* decision.
- Courts should defer to the “**expertise and the exercise of judgment by school authorities**” rather than try to have a bright-line rule for what “appropriate” progress is for each unique child.
  - But, this also means schools should have well-developed explanations by the time a case gets to court.
- Reality: The standard for the country was raised to what the Sixth Circuit has already held.

## Practical Tips

- The FAPE standard in the Sixth Circuit is not altered in any significant way.
  - Nonetheless, parent advocates/attorneys will try to use this with parents and your teams to push for a higher level of services.
- Audit IEPs
  - Static IEP – there could be trouble ahead!
  - Intervention specialists – lead the way
- Track student progress. This is the only way to prove any level of benefit.
- Remember: You're the experts!



# Dissecting the “Reasonably Calculated” Concept

## What does **Endrew F.** tell us about the benefit required to satisfy FAPE?

- Court in *Endrew F.* extensively discussed *Rowley*:
  - The Act requires States to “educate a wide spectrum” of children with disabilities
  - The benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end
  - The Court in *Rowley* declined to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act.
  - The IDEA cannot and does not promise any particular educational outcome. No law could do that—for any child.
- In developing the *Endrew F.* standard, the Court ruled:
  - Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

## **“Reasonably calculated” – a different focus**

Because the ultimate benefit required for FAPE is still fuzzy, “reasonably calculated” may give us a better path to defending our services.

How do we show that an IEP is “reasonably calculated” to deliver FAPE?

## Indications of “reasonably calculated”

- Valid and specific determination of needs
  - Including annual determination of baseline data
- Alignment of measurable goals to specific needs
- Alignment of services to goals
- Determination of placement that allows progress toward goals
- Measurement of progress toward goals
- Reconsideration of goals and services when progress falls short of or exceeds expectations
- Trajectory of overall progress toward realistic future planning
  - Inherent to this is an evolving IEP



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# Progress Monitoring





## What is the legal definition of “progress monitoring”?

- Here are the federal and state statute and regulatory citations for the definition of “progress monitoring”:
- Do we at least know what progress monitoring really measures?
  - Student progress?
  - Effectiveness of instruction?
  - Appropriateness of goals?
  - Appropriateness of methods of measuring progress?
  - External factors (e.g. divorce, death, medication changes, etc.)?

## Big picture legal requirements

- FAPE
  - Students with disabilities are entitled to a meaningful educational benefit
  - Regardless of what progress monitoring is measuring, it ultimately goes to FAPE
    - E.g. a child for whom inappropriate goals are written may not receive FAPE/we may not be able to prove we provided it
    - E.g. a child for whom inadequate instruction is being provided is not receiving FAPE
- Procedural Compliance (parental participation)
  - Parents are entitled to “meaningfully participate” in planning (thus, monitoring) the special education of their child
  - Denial of parental participation is a standard element of any due process complaint, formal complaint, etc.
  - Even without a formal dispute, failing to facilitate meaningful parental participation leads to distrust, resentment, etc.

## OAC 3301-51-07(H)(1)(d)

- The IEP must include a description of
  - “How the child’s progress toward meeting the annual goals...will be measured; and
  - “When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided”
- No list of possible ways to measure progress is found in the law (e.g. curriculum based assessments, rubrics, observation, etc.)
- No specific timeline or frequency for reporting progress is found in the law, BUT there are:
  - 504 implications
  - Meaningful parental participation implications
  - Obligations to reconvene implications (i.e. FAPE)
  - Statute of limitation implications

## Examining the elements of Section 6 of the IEP

1. Present Level of Academic Achievement and Functional Performance
2. Measurable Annual Goal
3. Method(s) [of Measurement]
4. Measurable Objectives
5. Method and Frequency for Reporting the Child's Progress to Parents
  - Each of the elements creates an opportunity to set the team up for success, or, conversely, a pitfall in relation to progress monitoring

# 1. Present Level of Academic Achievement and Functional Performance

- Purpose: This gives a snapshot of what the challenge is that we're trying to address
- Pitfall: Use vague and overly "rosy" words to describe present levels
- What this means to progress monitoring:
  - This establishes our baseline – without it we don't even know what we're measuring against
  - Unclear or "kind" descriptions of a student's present level can lead to overly ambitious goals and objectives, which in turn can lead to vague and overly rosy progress reports
  - Extended over multiple IEPs, especially for higher needs kids, this can lead to progress monitoring that reflects well-intentioned fibs rather than a student's actual progress
  - The whole point of progress monitoring is to help parents meaningfully participate – deny this at the risk of expensive compensatory education and services beyond age 22

## 2. Measurable Annual Goal

- Purpose: Focus services on an identified need in a way that is meaningful and verifiable
- Pitfall: Use ambiguous or undefined terms (i.e. write a goal that is not really measurable)
- What this means to progress monitoring:
  - Much like with imprecise or inaccurate present levels, this can lead to imprecise or overly rosy progress monitoring
  - Even if the goal is reasonable and delivery of services is exemplary, it is difficult to measure something that is inherently unmeasurable
  - Even if measurement of progress is accurate, it may not mean the same thing to every member of the team if the goal itself is vague
  - This all goes back to meaningful parental participation

### 3. Method(s) [of Measurement]

- Purpose: Identify the approach to be used for measurement and ensure a consistent set of data
- Pitfall: Choose a method that does not match up with the goal and objectives/benchmarks
- What this means to progress monitoring:
  - The wrong method leads to either meaningless data or made-up results
  - Keep in mind you are measuring the same thing from two angles: 1) How is the student progressing?; 2) Is our instruction effective?
    - Inappropriate methods could make it difficult to discern which angle to address – thereby denying FAPE
  - Sometimes the wrong method is symptomatic of “copy and paste” IEP drafting – again, this can deny FAPE

## Method(s) [of Measurement]

- Curriculum based assessment
- Portfolios
- Observations/anecdotal records
- Short-cycle assessments
- Performance assessments
- Checklists
- Running records
- Work samples
- Inventories
- Rubrics



## 4. Measurable Objectives

- (See the section on Measurable Annual Goal)
- Note: Progress monitoring is required for goals, not objectives/benchmarks
  - Most district choose to report progress on goals by reporting progress on objectives
  - Be clear with parents (in writing) if you are showing inadequate or no progress on one objective/benchmark but it is not of concern in relation to progress on the goal due to progress on other objectives/benchmarks

## 5. Frequency for Reporting the Child's Progress to Parents

- Purpose: Memorialize plan to communicate progress on IEP goals to parents
- Pitfall: Commit to an unrealistic plan
- What this means to progress monitoring:
  - OAC 3301-51-07(L)(2)(a)(ii)(a) requires the IEP team to reconvene and revise the IEP whenever there is a “lack of expected progress” toward IEP goals – failing to do so denies FAPE
  - Good news from the 6<sup>th</sup> Circuit US Court of Appeals: “The IDEA does not require schools to communicate with the parents of disabled children as frequently as the parents wish.”
  - Bad news from the law: Reporting progress with interims and report cards only may be inadequate – frequency must be based on individual child's needs AND requirement to ensure meaningful parental participation
  - Figure out ways to “double dip” in providing service and monitoring progress
  - (Appropriately) use technology to ease your burden

# Looking at Progress Monitoring in the New ODE Forms

## Ohio Department of Education Released New IEP and ETR

- Issued on December 12, 2017; required use by August 2018
- Universal Support Materials:
  - <http://education.ohio.gov/Topics/Special-Education/Comprehensive-Monitoring-System/IDEA-Onsite-Reviews/OEC-Monitoring-Training-Materials>
- Updated Required and Optional Forms:
  - <http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Ohio-Required-and-Optional-Forms-Updated>

# New IEP Form

IEP by third birthday? (If transitioning from Part C services) YES  NO

NEXT IEP REVIEW: \_\_\_\_\_

## PARENT/ GUARDIAN INFORMATION

NAME: \_\_\_\_\_  
STREET: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: OH ZIP: \_\_\_\_\_  
HOME PHONE: \_\_\_\_\_ WORK PHONE: \_\_\_\_\_  
CELL PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

## IEP FORM STATUS

(Check when complete)

- 1. FUTURE PLANNING
- 2. SPECIAL INSTRUCTIONAL FACTORS
- 3. PROFILE
- 4. EXTENDED SCHOOL YEAR SERVICES

### 3 PROFILE

Child's profile to include Reading Improvement and Monitoring Plan (if applicable):

### 4 EXTENDED SCHOOL YEAR SERVICES

Has the team determined that ESY services are necessary?  Yes  No

If yes, what goals determined the need?

Will the team need to collect further data and reconvene to make a determination?  Yes  No

Date to Reconvene

# New IEP Form: Transition Services

## 5 POSTSECONDARY TRANSITION

### POSTSECONDARY TRAINING AND EDUCATION

<b>MEASURABLE POSTSECONDARY GOAL:</b>
<b>Age Appropriate Transition Assessment regarding Post Secondary Training and Education</b> (indicating student's needs, strengths, preferences and interests)

COURSES OF STUDY:			NUMBERS OF ANNUAL GOAL(S) Related to Transition Needs		
TRANSITION SERVICE/ACTIVITY	PROJECTED BEGINNING DATE	PROJECTED END DATE	FREQUENCY	PERSON/AGENCY RESPONSIBLE	+
					-

**TYPE OF EVIDENCE INDICATING THE TRANSITION SERVICE HAS BEEN COMPLETED**

- |  |  |
|--|--|
| <input type="checkbox"/> A. Anecdotal Record | <input type="checkbox"/> D. Rubric       |
| <input type="checkbox"/> B. Checklist        | <input type="checkbox"/> E. Other (list) |
| <input type="checkbox"/> C. Work Sample      |  |

Transition Progress Report

# New IEP Form: Section 6

## 6 MEASURABLE ANNUAL GOALS

NUMBER: 1      AREA: \_\_\_\_\_

PRESENT LEVEL OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

--

MEASURABLE ANNUAL GOAL

--

METHOD(S) FOR MEASURING THE CHILD'S PROGRESS TOWARDS ANNUAL GOAL

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> A. Curriculum-Based Assessment | <input type="checkbox"/> E. Short-Cycle Assessments | <input type="checkbox"/> I. Work Samples |
| <input type="checkbox"/> B. Portfolios                  | <input type="checkbox"/> F. Performance Assessments | <input type="checkbox"/> J. Inventories  |
| <input type="checkbox"/> C. Observation                 | <input type="checkbox"/> G. Checklists              | <input type="checkbox"/> K. Rubrics      |
| <input type="checkbox"/> D. Anecdotal Records           | <input type="checkbox"/> H. Running Records         |  |

MEASURABLE OBJECTIVES

NUM	OBJECTIVE

FREQUENCY OF WRITTEN PROGRESS REPORTING TOWARD GOAL MASTERY TO THE CHILD'S PARENTS

*Note: Progress Reports must be provided to parents of a child with a disability at least as often as report cards are issued to all children. If the district provides interim reports to all children, progress reports must be provided to all parents of a child with a disability.*

Reported every  weeks

# Progress Report Changes (Optional Form) (OLD)

Child's Name: [Redacted]  
Date: [Redacted]

Student ID: [Redacted]  
IEP Date: [Redacted]

Grade: [Redacted]

**Parent:** This form is used to report on your child's progress on the goals and objectives listed on his/her IEP. Should you have any questions, please do not hesitate to contact your child's special education teacher.

Student: [Redacted] School Year: [Redacted]

Goals	[Redacted]
Objectives	[Redacted]
Summarize the measurable data utilized to assess progress	[Redacted]
Comments	[Redacted]
Description of child's progress toward meeting the goal in measurable terms	[Redacted]



# Progress Report Changes (Optional Form) (NEW)

## OP-06 PROGRESS REPORT

School Year:

District Name:

Student Name:

Student ID:

Grade:

Date:

Reporting Period:

IEP Date:

Goal #:

Goal:

Objective #:

Objective:

Summarize the measurable data utilized to assess progress

### Quantitative Data used to Demonstrate Progress

Data Source	Data Points	On Track?	Goal Met?
		<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
		<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
		<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
		<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
Comments			

Add Next Goal

Add New Reporting Period



# Transition Services Progress Report NEW!

**TRANSITION PROGRESS REPORT** School Year:

District Name:

Student Name:

Student ID:

Grade:

## TRANSITION SERVICE/ACTIVITY PROGRESS REPORT

### POST SECONDARY TRAINING AND EDUCATION

Goal:

Transition Service/Activity	Summarize the Outcome(s)	Status
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed

Comments

### COMPETITIVE INTEGRATED EMPLOYMENT

Goal:

Transition Service/Activity	Summarize the Outcome(s)	Status
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed

Comments

### INDEPENDENT LIVING

Goal:

Transition Service/Activity	Summarize the Outcome(s)	Status
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed
		<input type="radio"/> Not Started <input type="radio"/> In Progress <input type="radio"/> Completed

Comments

# Other Considerations

## You've Avoided the Pitfalls, but Progress is not Meeting Expectations

- OAC 3301-51-07(L)(2)(a)(ii)(a) requires the IEP team to reconvene and revise the IEP whenever there is a “lack of expected progress” toward IEP goals – failing to do so denies FAPE
  - This cuts both ways – early mastery or inadequate progress
- Having realistic and measurable goals, appropriate benchmarks/objectives, and good ways to measure progress ensure you're not first learning about this at the annual review
- Requiring more of your staff than “AP,” “LP,” “M” for progress reporting is key
  - Focus efforts on challenging kids, challenging parents, challenging goals
  - Be even more honest and forthright in these situations (seems obvious, but the opposite is often what happens)

## Parent is Demanding ESY Services and You Want to Say No

- While ESY, like everything else in an IEP, is about FAPE, Ohio has taken a specific approach
  - ESY is required when failing to provide it would result in retention and recoupment issues that would deny FAPE
    - (Don't *all* kids experience retention and recoupment issues?!?)
- Meaningful and frequent progress monitoring is needed to substantiate ESY refusals. Good progress monitoring can protect against expensive and unnecessary ESY services
  - Inadequate progress monitoring makes ESY a fight you'll never pick (you will just go along to get along)

## “Informal” progress monitoring does not align with the data gathered per the IEP

- THE FACTS ~
  1. Students on IEPs interact with a lot of staff
    - Sometimes outside service providers
    - Sometimes not certified professionals
    - Almost always people who want to help students with disabilities and their families
  2. Parents of students on IEPs sometimes demand lots of communication

**Therefore**, it is essential that all staff working on behalf of the district follow chain of command and communicate with appropriate parties

- Informal progress monitoring (e.g. daily logs, text messages, phone calls) can be disastrous
- Anything appropriate to communicate to parents is appropriate to communicate to a supervisor

## **A Student with Significant Needs Makes Such Minimal Progress it is Hard to Measure**

- IDEA does not accept that a student will not show progress over time
- If our progress monitoring fails to show any progress, we may have walked into a pitfall in Section 6
  - Present levels were inaccurate
  - Goal/objective/benchmark was overly ambitious
    - Remember – you do not need consent for each goal
  - The method of measuring progress is ineffective
- Convene the team without delay
  - It is not unusual to encounter IEPs that have changed little for years for higher needs students (especially in high school)
    - Beware the plateau

# CHAPTER REVIEW (Just Kidding 😊)



# **Let's Play A Game Called Finding the Meaningful Benefit!**

## Static IEP ...

- High school student with multiple disabilities, and his IEPs for 12/13, 13/14 and 14/15 had a lot of similarities. Student had some progress on his progress reports but parents are adamant that more should be accomplished and the rate of growth improved.

## Carryover Goals

- Majority of student's second grade IEP goals were carried over from her first grade IEP, while some more advanced goals were developed in writing, reading and comprehension, and math calculation. Baselines in the PLOP were adjusted.

## Addressing Student Needs

- Student's ETR indicated he needs sensory support for the day, with OT and services from additional service providers. After previous IEPs and ETRs included sensory support throughout the day, the IEP team decided to prioritize the student's needs differently, and left off sensory support in his most recent IEP. No explanation can be found as to why the student no longer receives sensory support. Student is placed at a special school by the District but one that is unable to provide sensory support for the student.

## ***L.H. v. Hamilton County Dep't of Educ., 72 IDELR 204 (6th Cir. 2018)***

- A 10-year-old boy with Down Syndrome's difficulties with the general education curriculum during his second-grade year did not justify a Tennessee district's recommendation to move the student to a special day class in another school.
- Determining that the student could make progress in the general education setting, the 6th Circuit held that the proposed placement was not the student's LRE.
- The three-judge panel relied on the 6th Circuit's earlier ruling in *Roncker*.

## ***L.H. v. Hamilton* continued...**

- The *Roncker* court held that a district may only remove a student with a disability from the general education setting if:
  - 1) the student would not receive any benefit from that placement;
  - 2) any benefits of the general education placement would be far outweighed by the benefits of a special education placement; or
  - 3) the student would disrupt the general education class.

## ***L.H. v. Hamilton* continued...**

- The restrictiveness of a student's educational placement and the appropriateness of his IEP are two distinct issues.
  - **"The appropriate yardstick is whether the child, with appropriate supplemental aids and services, can make progress toward [the IEP's] goals in the [general education] setting."**
- The Court found that the student could benefit from the general education setting, and ruled that the district proposed placement was overly restrictive.
- The Court further found the unilateral parent placement of a Montessori school provided a personalized curriculum and a one-to-one aide, and held the parents were entitled to reimbursement. The 6th Circuit remanded the case to the District Court for a determination of the amount owed to the parents.
  - (\$103,274, which represented private school tuition and the cost of a full-time aide for third through eighth grades (+attorneys fees)).



# LRE Decision Making



# What is a “Placement”?

## Special Ed Math

**SET OF SERVICES + PEER GROUP = PLACEMENT**

## What Counts as the SET OF SERVICES?

- Look strictly to what is captured in the IEP (Section 7)
- Avoid name brands for curriculum, devices, etc. except when there is truly only one appropriate option and there will only ever be one appropriate option
- Avoid program/location names except when there is truly only one appropriate option and there will only ever be one appropriate option
- Never name specific individual providers of services
- NOTE: ODE guidance is that anyone who works under the supervision of another (para, COTA, etc.) should be listed in “Support for Personnel”

## What Counts as a PEER GROUP?

- At minimum there are two types of peer groups:
  - Inclusion (disabled and typical)
  - Exclusively disabled
- It is not hard to imagine a hearing officer or court slicing this a bit thinner
  - E.g. looking to the type of disability or severity of disability
- Consider how the peer group changes throughout the day for some children – a child's placement may require multiple types of peer groups
  - Especially consider non-academic settings like cafeteria, specials, etc.

## How is a Placement Judged?

- Does it provide FAPE and is it the LRE?
  - The tension between FAPE and LRE is a topic for another day, but is certainly a very real challenge
- Don't Forget *Rowley*
  - IEP must be “reasonably calculated to enable the child to receive educational benefits.”
- Does not require schools to maximize the potential of any student
  - Not a Cadillac but the equivalent of a serviceable Chevrolet

## Parental Consent for Change of Placement

- Clearly document with signature page in proper section
- Further document with PR01 explaining decision making process
  - Wait until PR01 is delivered to implement the change
  - Don't forget to document school-proposed changes that parents refuse
- Assume changes are “permanent”
- Jump through hoops for all but minor changes
  - E.g. if middle school has 47 minute periods and IEP calls for 1 period a day of math intervention it is probably not a change of placement when high school has 55 minute periods and IEP remains unchanged.

## Due Process to Change Placement

- Ohio regulations generally require parental consent unless a district files/prevails in a due process complaint
- Bear in mind the costs of due process
  - Time
  - Treasure
  - Relationship
- Take an incremental approach to improve odds
  - Save drafts/prior versions of documents
  - Invest in outside support
  - Begin with the end in mind

## Transfer Students

- Within Ohio
  - Implement comparable services
  - Can develop new IEP but stay put applies
  - Can reevaluate but consent is required
- Interstate transfers
  - Implement comparable services
  - Do your own INITIAL evaluation
  - Develop your own INITIAL IEP

## Disciplinary Change of Placement

- A disciplinary change of placement occurs if a child is removed from his current educational placement and:
  - The removal is for more than 10 consecutive days; or
  - The child is subjected to a series of removals that constitute a pattern.
    - The series of removals totals more than 10 days in a school year;
    - Substantially similar behavior triggered multiple removals; and
    - Other additional factors such as the length of each removal, total amount of time removed, or the proximity of the removals to one another.
    - *Technically the school determines if there is a pattern, but this is subject to due process and judicial review.*
- A change of placement triggers the full procedural requirements of IDEA (including the need for a manifestation determination).



## Discipline/Safety Exceptions

- 1<sup>st</sup> 10 Days:
  - No requirement for services, FBA, BIP, MD
- 11<sup>th</sup> day plus:
  - Provide services during discipline (regardless of change of placement)
  - Determine if placement has changed (either 11+ consecutive days OR pattern involving 11+ days total)
  - If there is a change of placement, generally must conduct MD and provide FBA and BIP as appropriate
- Exceptions\*:
  - Offenses involving weapons, drugs, or serious bodily injury. Also for a child who poses a “substantial risk” of injury to self/others
- **An agreed upon change of placement can avoid all of the above**

## Manifestation Determination Reviews

- There is rarely a situation that all the facts line up; therefore, the MDR team should look at all the evidence presented and make a reasonable determination based on information available
  - Specific facts about behavior can be important
- The MDR team should also take into consideration any information provided by the parent, including any medical opinions
  - The team must take it into consideration, but this does not mean the team has to accept any medical opinion
- The MDR team should also into consideration the student's unique disability and conduct
  - Generic information about what a particular disability label "is" is of limited value

## 45-Day Exception Rule

- A child may be removed by a district to an IAES for up to 45 school days when the student:
  - 1) Inflicts serious bodily injury\* on another person while at school, on school premises or at a school function
  - 2) Carries a weapon\* to or possesses a weapon at school, on school premises, or at a school function
  - 3) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function

## Alternative 45-Day Exception

- When a child's behavior is dangerous, but does not fit one of the regular 45 day exceptions, a district can file expedited due process seeking a 45 day change if:
  - The child has been suspended or expelled and the MDR concludes the behavior is a manifestation of his disability
  - The school members of the team conclude/due process hearing officer agrees that "maintaining the current placement of the child is substantially likely to result in injury to the child or to others."
- The school can seek a renewal for one additional 45 day period of removal

## Interim Alternative Educational Setting

- Any time a child is removed for disciplinary reasons the child is still entitled to a version of FAPE called an Interim Alternative Educational Setting (IAES)
- An IAES must allow a child to:
  - “Progress” on IEP goals
  - “Participate” in the general education curriculum
- If the removal is for 10 days or less the school members of the IEP team determine IAES and need not involve parents
  - For practical reasons you may choose to involve parents
- If the removal is for more than 10 days the parents have a right to be part of the discussion with other members of the IEP team

# The Role of Parents “Meaningful Participation”

## “Meaningful participation”

- Why do we care?
  - Practical
    - “We’re talking about somebody’s baby here”
  - Legal
    - If a district does not allow parents to “meaningfully participate” in IDEA processes, it is effectively predetermining special education for the child
    - Courts will always find predetermination to be a procedural violation, and will often conclude that this leads to a substantive denial of FAPE
      - Basically, procedural non-compliance is an invitation for a court to be skeptical of substantive compliance

## Deal v. Hamilton County Bd of Ed (TN)

- Child with autism – Zachary Deal
- Oct 1997: Parents simultaneously funded 1:1 ABA therapy with public school offerings from age 3
- Spring 1998: Dispute with ESY at end of 1<sup>st</sup> year of preK
- Oct 1998: 2<sup>nd</sup> IEP was 95 pages, 35 hrs/wk individually designed instruction (in CDC)
- Aug 1999: 2 meetings to develop 3<sup>rd</sup> IEP
- Sept 1999: Child parentally placed in private pre-K 3 hrs/2Xweek
- Sept 1999: Deals file due process complaint alleging need for more inclusion and 1:1 ABA



## DP and Beyond

- Due process decision
  - School had unofficial policy of refusing “Lovaas style” ABA, thus it predetermined education and denied meaningful parental participation
  - School failed to have regular education teachers at all IEP team meetings
  - More ABA time was required based on research
  - ESY was required
  - School must reimburse parents for private ABA
  - Parents were “prevailing party” (attorney fees)
- Federal District Court
  - No IDEA violations – school prevails
  - Parents were at all meetings and “forcefully” advocated

## Deal v. Hamilton County Bd of Ed (TN)

- 6<sup>th</sup> Circuit Court of Appeals
  - Finds IDEA violations and remands to district court
- Finding of predetermination supported by:
  - Consistent rejection of Lovaas style ABA for other children
  - Parents told they could not ask questions during Mar 1999 meeting
  - School never spoke with private Lovaas style ABA providers
  - School concluded that Lovaas style ABA would be expensive
  - School staff said “powers that be” will not fund ABA
  - School staff said she wished people would pay more taxes so the school could provide ABA
  - School refused to discuss 1:1 ABA despite apparent results

## Deal v. Hamilton County Bd of Ed (TN)

- “The district court erred in assuming that merely because the Deals were present and spoke at the various IEP meetings, they were afforded adequate opportunity to participate. Participation must be more than a mere form; it must be *meaningful*...Where there was no way that anything the Deals said, or any data the Deals produced, could have changed the School System's determination of appropriate services, their participation was no more than after the fact involvement.”

# Nitty Gritty of Discipline

## **Discipline Landmines**

- FBAs and BIPs
- Removals
- Bus Suspensions
- MDRs

# **(1) FBAs & BIPs – What’s the shelf life for these?**

## (1) Scenario

A child has always been a behavior problem, and routinely burns through all 10 “free days” of disciplinary removal. The school does not dispute that his behavior is a direct result of his disability. As a result, by mid-November the school is unable to suspend or expel the student. He isn’t learning, and neither are those around him. The parent won’t agree to an educational change of placement to address behavior needs.

## (1) FBAs & BIPs

- Functional Behavior Assessment (FBA):
  - An FBA is used to determine the “function” of a student’s behavioral difficulties
    - An FBA attempts to determine what the student is gaining or avoiding by engaging in the problem behavior and what is motivating him/her to do it
- Behavior Intervention Plan (BIP)
  - A BIP provides positive behavioral supports to reduce problem behaviors based on the assessment results of the FBA
  - A BIP might also describe consequences for behavior, but should only do so if the child’s unique needs require a specific set of consequences or considerations



## (1) When FBAs and BIPS are required

- An FBA and BIP are only “required” when a manifestation determination review has determined that a child’s behavior was a manifestation of his disability
  - Inherent to this is that a child must be removed in excess of 10 days in a school year to require an MDR
- It is possible that an IEP team would create the requirement for an FBA or BIP through the IEP itself (e.g. by stating in Section 2 “Special Instructional Factors” that behavior impedes learning but not addressing behavior in an IEP goal)

## (1) Case Law

- A district's failure to develop a BIP can amount to denial of FAPE
  - A district was required to provide 250 hours of compensatory education to a sixth grader who was expelled because of escalating behavioral problems- *Rialto Unified School District*
- The failure to properly or consistently implement the behavioral interventions identified in the BIP can amount to denial of FAPE
  - An Alabama district failed to implement a BIP when it took disciplinary action on some behaviors but ignored others- *Guntersville City Bd. Of Ed.*

## (1) Practical tips

- Be proactive with these documents – it can make sense to develop and revise these even when not required by the regulations to do so
- These are not static documents – revise and keep copies of prior versions
  - A history of revising and refining FBAs and BIPs is critical evidence if a district is compelled to file due process to change a child's placement against a parent's wishes due to behavior concerns
- Do not just list consequences in BIPs – have strategies to prevent problems to begin with
- Something needs to change if you are regularly using restraints or seclusion
  - ▶ Be careful to not limit your options by spelling out the only appropriate consequences for misbehavior in a BIP – you don't need authority to carry out disciplinary actions which you already are authorized to use per law.

## **(2) Removals – ISS isn't really a removal, right?**

## **(2) Scenario**

You get a call from a frustrated parent sometime in mid-March. She claims that she has picked up her child 8 times this year in response to calls from the school about behavior. When you contact the building principal about it, you learn that she's unsure how many times the parent has come in, but she explains that they only call home when the child acts up while sitting in the office for the afternoon due to a behavior issue. She's unsure how often the child is in the office to "cool off." The IEP doesn't address any of this.

## **(2) Removals -placement**

### Placement (OAC 3301-51-09(D)):

- Is determined at least annually;
- Is based on the child's individualized education program (IEP); and
- Is as close as possible to the child's home;
- Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if nondisabled;
- In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that the child needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

### Placement (based on case law and guidance)

- A set of services + a peer group

## (2) Case Law

- According to the Supreme Court, “normal procedures” such as the use of study carrels, time-out, detention, or restriction of privileges do not trigger IDEA protections.
  - (Note, however, if a teacher uses in school discipline excessively, if the discipline conflicts with the student’s IEP, or if it is unnecessarily harsh, then the discipline may change the student’s placement and even violate the Constitution.)

## (2) Practical Tips

- Make sure your staff know that “normal” in-school discipline is available, but make sure they also know its limits (roughly one period)
- Be strategic in using days of removal
- Be specific in explaining the grounds for removal
- Ensure all parties are on the same page as to what is expected when a call is made to home
- Retain sign-out records when a parent chooses to remove a child after a behavior incident



## **(3) Pattern of Removals – Can we ever discipline a kid after 10 days of removal?**

### (3) Scenario

- Sept. 14- Hit another student when he got upset about the student taking his seat at lunch- **Suspended 3 days**
- Oct. 31- Became agitated during Halloween party and threw his notebook, almost hitting another student- **Suspended 1 day**
- Nov. 6<sup>th</sup>- Would not stop yelling profanities in class- **½ day in In-School suspension**
- Nov. 12<sup>th</sup>- Student ran out of the building because did not want to go to math class- **1 day in In-School suspension**
- Nov. 27<sup>th</sup>- Student got into a fight on the bus with a peer- **Suspended 6 days**
- Parents claim we cannot impose all 6 days without an MDR

## (3) Disciplinary Change of Placement

- A disciplinary change of placement occurs if a child is removed from his current educational placement and:
  - The removal is for more than 10 consecutive days; or
  - The child is subjected to a series of removals that constitute a pattern.
    - The series of removals totals more than 10 days in a school year;
    - Substantially similar behavior triggered multiple removals; and
    - Other additional factors such as the length of each removal, total amount of time removed, or the proximity of the removals to one another.
    - *Technically the school determines if there is a pattern, but this is subject to due process and judicial review.*
  - A change of placement triggers the full procedural requirements of IDEA (including the need for a manifestation determination).

## (3) Case Law

- Student was suspended for 19 days total:
  - 5 days for hitting a student & calling her vulgar names
  - 7 days for slapping a student & calling her vulgar names
  - 7 days for getting into a fight with another student
- School did not determine whether removals were due to a pattern of behaviors until the MD meeting (after 19 days out)
- MD meeting was not held after 10 days of removal
- Student was not provided special education services after the 10<sup>th</sup> day of removal
- ODE concluded that the district violated the discipline provisions of IDEA

## (3) Practical Tips

- Don't always assume 11+ days is a pattern of removal (but assume high teens is, and beware of ODE monitoring)
- Thoroughly document removals— always work from perspective that you are preparing case for change in placement
- Lay the groundwork for persuading a parent to consent to an educational change of placement if a child's needs indicate it might be needed/appropriate
  - It's too late to do this if you've burned through your "free" days

**(4) Transportation Suspensions –  
You're telling me bussing is  
protected even if it's not in the  
IEP?!?**

## (4) Scenario

- Transportation is not a special service in the child's IEP.  
Behaviors/consequences:
  - Refusing to stay seated on bus- Suspended from bus for 2 days (absent from school)- Nov. 7<sup>th</sup>
  - Yelling and cursing in class- Suspended from school for 2 days- Dec. 8<sup>th</sup>
  - Fighting on the bus- Suspended from bus for 5 days (absent from school)- Jan. 20<sup>th</sup>
  - Punched a student during lunch- Suspended from school for 5 days- Feb. 5<sup>th</sup>
- Parent alleges disciplinary change of placement has occurred and MDR is required
  - Total Days Suspended from School= 7
  - Total Days Suspended from Bus= 7

## (4) Transportation and Change of Placement

- Be careful kicking kids off buses
  - If transportation is on the IEP, denial of transportation is a change of placement.
  - Even if transportation is not on the IEP, denial of transportation may be problematic if the child is unable to get the benefit of his special education (i.e. the child doesn't get to school).
    - Carefully consider if the behavior on the bus is related to that in the classroom/addressed in IEP.
    - ODE/ED have declined to give further clarification.
  - Consider offering alternative transportation if a child is removed for 10 or more days from the bus and is not attending school.



## (4) Case Law

- Student was suspended as follows:
  - 1 day bus suspension (Oct. 12)
  - 1 day bus suspension (Nov. 1)
  - 1 day in-school suspension (Nov. 16)
  - 2 day bus suspension (Nov. 29)
  - 5 day bus suspension (April 7)
  - 2 day out-of-school suspension (April 14)
  - 3 day out-of-school suspension (May 2)
  - 4 day out-of-school suspension (May 19)
- \* All suspensions were for verbal or physical altercations or name-calling
- OCR concluded:
  - Student was excluded from school for a total of 19 days
  - The suspensions constituted a pattern of behavior
  - The district should have conducted a manifestation determination before it excluded the student for more than 10 days

## (4) Practical Tips

- Ensure that transportation decision-makers understand that there can be special ed implications to bus suspensions
- Consider alternatives to bus suspensions
  - Using aides on buses
  - Bus stop monitors
  - Positive behavioral support
  - Be careful about putting these in the IEP if you don't think special transportation is needed
- Consider offering an alternative form of transportation if a child misses 10 or more days in connection with a bus suspension

**(5) Services during Disciplinary Removal – 1 hour of home instruction per day, right?**

## (5) Scenario

- A student receives IEP services in the general education setting for reading and math, vocational services in a diesel mechanic program, and related services for OT. There is a goal to support each of these services. Prior to the behavior incident (which was found to be a manifestation), there was no behavioral goal.
- Parent balks at your offer of 1 hour of home instruction by a certified aide and access to on-line coursework.

## (5) Services during Disciplinary Removal

- The educational services provided must enable the child to:
  - Continue to participate in the general education curriculum; and
  - Continue to progress toward meeting IEP goals.
- It does not have to be identical in form to the services provided prior to the discipline
- There is generally an exception to the requirement to provide services during the first 10 days of removal during a school year

## (5) Case Law

- A child was removed 45 days despite the behavior being a manifestation, because it involved a weapon.\* The IEP team put the following services in place:
  - 2 ½ hours of tutoring at the local public library for each day of the suspension to assist in assignment completion for all but 1 of the student's general education classes
- The student's IEP contained the following:
  - All services provided in the general education setting
  - No behavioral services
  - Only behavioral goal was for conflict resolution & completion of assigned tasks
- The hearing officer held that the district's services:
  - Enabled the student to continue to participate in the general education curriculum
  - *Failed to enable him to receive services to meet his IEP goals*
  - *Failed to address the behavior that led to the suspension*

## (5) Practical Tips

- Train your staff on the standards (gen ed = “participate,” sped = “progress”)
- Avoid phrases that indicate all special ed children receive the exact same offer of services during removal
- Be creative in addressing unique situations (e.g. vocational education, related services heavy IEP)
- Keep things in context – we’re less concerned about related services for a short removal than a long one, for a non-autistic child than an autistic child who requires routine, etc.
  - Big picture FAPE is what ultimately should guide your decisions

# **(6) MDRs- Team Decisions – No ~~taxation~~ manifestation without representation!**



## **(6) Scenarios**

You've jumped through all the right hoops in convening the MDR. A thorough, professional, and insightful discussion was had. Adequate details related to the incident were shared, and the ETR was reviewed. You vote on whether the behavior was a manifestation only to have 3 school members finding no manifestation, and 2 school members plus the parent finding it is a manifestation.

## (6) MDR—Team Decisions

- The manifestation determination is conducted by a team including the district, the parent, and “relevant” members of the IEP team
  - Determined by the district
- While parents have a right to invite additional participants to the MD review, they do not have the right to veto the district’s choice of team members
- There is no requirement for a vote, nor does the parent have veto power over the decision, nor must we have consent to impose a disciplinary change of placement
  - Expedited due process is what’s available to a dissatisfied parent

## (6) Case Law

- A student with an emotional disturbance fires a paintball gun at the building and buses
  - ▶ The parents argued there was a procedural error because not all the IEP team members participated in the manifestation determination meeting
  - ▶ The parents argued there was a procedural error because they weren't given an "equal right" to determine whether the behavior was a manifestation
  - ▶ The court held that the law allows schools to determine the relevant team members for a manifestation determination meeting
  - ▶ The Court held that there is not veto power for parents

Fitzgerald v. Fairfax Cty. Sch.  
Bd. (ED Va., 2008)

## (6) Practical Tips

- The word “vote” does not appear anywhere in the special education regulations
  - That said, there’s nothing wrong with gathering some informal input ahead of time (“open” vs. “blank” minds)
- The entire IEP team is not required to participate in MDR meetings – be strategic
- There is no right for staff to express their disagreement in a written addendum to the MDR decision
- Consider “optics” – if a parent tries to load the meeting with family representatives you may want to increase the school presence even though there is no vote

# **(7) MDRs - Relevant Diagnoses – When going along to get along goes bad**

## (7) Scenario

You've been working with a child for years during which he's been identified as SLD. During 7<sup>th</sup> grade the parent starts sharing behavior concerns she sees at home that you never see at school. During the re-eval she presents a vague doctor's note that mentions ODD. The team identifies the student as SLD, and includes the doctor's note in the ETR without comment. A month later student curses out a teacher. His 5 day suspension puts him at 15 overall days of removal for the year. At the MDR Mom claims his behavior was caused by his ODD.

## (7) MDR — Relevant Diagnoses

- Manifestation Determination Process:
  - The team reviews “all relevant information” (e.g. student’s file, IEP, ETR, teacher observations, information provided by parent, etc.)
  - Team determines whether there is a nexus between the student’s disability and his misconduct
    - Was the conduct caused by or did it have a direct and substantial relationship to the child’s disability?
      - Consider all of a student’s disabilities in the MDR
    - Was the conduct the direct result of the district’s failure to implement the IEP?

## (7) Case Law

- A student's IEP showed ADHD as her primary disability, but it also noted that she had bipolar disorder, oppositional defiant disorder, and a mood disorder
- In 2011, she began getting angry for no apparent reason
- In the situation at issue, when someone asked the student to move her backpack, she refused, pushed one teacher, and grabbed the keys around another teacher's neck and threatened to kill him
- MD team determined that the student's behavior was not a manifestation of her disability (ADHD)
- ED concluded that the MD team failed to take into consideration all the student's disabilities; thus, under the appropriate analysis, the behaviors were a manifestation of the student's disability



## (7) Practical Tips

- Consider all of a student's disabilities in the MDR
- Do not agree to listing additional disabilities in the ETR just to placate parents – it can come back to haunt you
  - Remember: You do not need parental consent for the results of the ETR – you only need it to conduct the ETR to begin with
- Do not ignore doctor notes or independent educational evaluations with additional diagnoses. Respond by:
  - Determining they don't meet your IEE criteria; or
  - Asking what school information was used in reaching the doctor's conclusion (probably none)
  - Asking what the school should be looking for
  - Explaining how you do not see any of the described behaviors at school
  - Capturing the above in writing/PR01
- Train staff (and parents) that the regulations just require that the IEP team consider, not adopt, outside evaluator recommendations

# **(8) MDRs - Students with Emotional Disturbance – How do we ever discipline an ED kid?**

## **(8) Scenarios**

A student has significant mental health issues and is identified as ED. He routinely reacts in a very loud, sometimes physically violent, way when redirected by staff. Already this school year, such behavior has led to 3 MDRs in which the behavior was determined to be a manifestation. The student has another incident in which he repeatedly ignored a directive to return a classmate's belongings.

## (8) MDRs—Students with an Emotional Disturbance

- Always come back to the relevant question-
  - ▶ Was the conduct caused by or did it have a direct and substantial relationship to the child's disability?
  - ▶ Just because a child's behavior has been a manifestation in the past does not mean other behavior must be a manifestation in the future
  - ▶ Specific descriptions of a student's needs and behaviors make it more likely we can distinguish behaviors that are manifestations from those that are not

## (8) Case Law

- The student had oppositional defiance disorder
- During the year the manifestation team had met numerous times when the student would act out
  - On at least four occasions the team found that the student's behavior was a manifestation of his disability
  - On all of those occasions the student's behavior involved verbal outbursts, name calling, threatening persons, and making other threats
- On the occasion at issue, the student ignored the school officials in their instructions and made a choice to defy repeated directions from officials
- The hearing officer determined that the behavior was not a manifestation, because it was distinct from the pattern of behavior that had previously been observed.

## (8) Practical Tips

- ED is an especially tough label to get staff past – they are often convinced that nothing can be done and therefore “phone in” the ETR, incident reports, and MDR leaving us without sufficient info to win a fight
- MDR decisions are based on a student’s unique needs – not on the description of his disability from the DSM-5
  - Again, the real work is to be done in creating the ETR (e.g. give detailed descriptions of what a diagnosed disability looks like for this child, break down individual responses on behavior inventories, etc.)
- Specifically to ED, the ETR should be clear as to how the disability has manifested itself in the past
- If we encounter an entirely new manifestation of the disability, we *may* get a pass the first time we discipline, but consider whether the ETR needs updated

**(9) 45-Day Exception Rule –Does the law ever protect other kids and our staff?!?**

## **(9) Scenario**

A child identified as ED has a long history of violent outbursts. In the most recent incident, he grabbed a heavy brass bust of Sir Edward Elgar off the piano in music class, and swung it at the head of a classmate. The bust scraped the classmate's temple, but fortunately there was no direct hit or real injury. There is no question this behavior is a manifestation.



## (9) 45-Day Exception Rule

- A child may be removed by a district to an IAES for up to 45 school days when the student:
  - 1) Inflicts serious bodily injury\* on another person while at school, on school premises or at a school function
  - 2) Carries a weapon\* to or possesses a weapon at school, on school premises, or at a school function
  - 3) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function

## (9) Case Law

- Are the following items “Weapons”?
  - Scissors that had dull blades, rounded tips, and could only cut paper when the blades came together when the scissors were pointed at a classmate during a fit of anger?
  - A pencil used to stab a classmate?
  - Metal awls/spikes just under two inches in length?
  - Cigarette Lighter with a retractable blade?

## (9) Practical Tips

- See the 45 day rule as a last ditch exception to normal MDR outcomes – you don't need this if the behavior is not a manifestation
- Be cautious about using the 45-day rule for bodily injury to remove a dangerous student-Bodily injury is a high standard
  - It is best to have evidence of medical treatment
- Mind the distinctions between “controlled substances” and “illegal drugs”
- Consult legal counsel about using indirect evidence of dealing to access 45 days
- Consult legal counsel about when something not normally a weapon could be treated as one based on student intent/use

**(10) Children Not Yet Identified –  
Wait...we need to worry about the  
application of IDEA protections to  
kids who aren't even identified?!?**

## (10) Scenarios

As a child works his way through elementary school, several of his teachers email the principal expressing concerns that the child is “different” and has some “social awkwardness” that can result in other children avoiding him. They indicate they’ve also shared this with the parent, who seems to want to ignore this. No proposal or request for an evaluation is ever made. Within the first month at the middle school the child threatens to blow up the building. During the expulsion hearing it comes out that the child felt like he had no friends, and the parent states that a private evaluation after the incident concluded he is autistic. She demands that he return to school immediately.

## (10) Children Not Yet Identified

- If a district has “knowledge” that a child has a disability, even if the child is not identified, the IDEA protections apply
- Knowledge means (before the incident)
  - The parent had expressed in writing concerns about the child having a disability to a teacher, supervisor, or administrator
  - The parent had requested an initial evaluation (not necessarily in writing)
  - A teacher had “expressed specific concerns about a pattern of behavior” by the child directly to a supervisor or the director of special education
  - Exceptions- There is no knowledge if:
    - The parent has not allowed an evaluation of the child
    - The parent has declined special education services
    - The child has been evaluated and determined not to be eligible

## (10) Case Law

- A child was on a 504 plan related to significant learning difficulties, ADHD diagnosis, attempted suicide, etc. At 504 meetings that included teachers and administrators, teachers reported panic attacks and the inability to complete work. The parent shared information about an attempted suicide and subsequent hospitalization.
- No offer to evaluate under IDEA was made or requested.
- An undisclosed discipline incident occurred.
- Court concluded that the district had “knowledge.” Further, the “pattern of behavior” reported by a teacher need not be related to discipline, and the teacher need not specifically suggest special education services are required for “knowledge.”

*ANAHEIM UNION HIGH SCHOOL DISTRICT, Plaintiff, v. J.E*  
(Dist. Ct. Cent. CA, 2013) 61 IDELR 107

## (10) Practical Tips

- Train staff on what constitutes “knowledge” and discourage sloppy word choice
- Train building leadership on red flags that indicate “knowledge”
  - Emphasize their affirmative duties – we can’t be willfully ignorant
- Document refusals to evaluate with PR01 to erase “knowledge”
- Fulfill child find requirements/offer evals annually (in writing) for previously identified children
- If a parent attempts to refuse part of an evaluation, determine whether the evaluation can proceed and provide PR01 accordingly
- Even when there is no “knowledge,” there may be an obligation to offer or refuse an expedited evaluation



# Seeing Section 504 Through an IDEA Lens

## Rehabilitation Act of 1973

- The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors.
- **Section 504 of the Rehabilitation Act of 1973**
  - “No otherwise qualified disabled individual in the United States ... shall, solely by reason of his handicap, 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.”

## Section 504 & FAPE

- Section 504 requires that districts provide a free appropriate public education (FAPE). Section 504 defines FAPE as –
  - The provisions of general or special education services and related aids and services to a student with a disability that are as **effective** as those educational services made available to nondisabled peers
    - Includes both students receiving services under IDEA and students in general education who need Section 504 supports
- **“Effective”**
  - An aid or service must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs
  - Does **not** require the aid or service to produce the identical result or level of achievement for disabled and nondisabled persons

## Section 504 Standard

- **Section 504 standard of FAPE**
  - **Compares** whether the general and special education and related aids and services are designed to meet the individual needs of students with disabilities as adequately as the needs of nondisabled students are met
- The Office for Civil Rights (OCR) generally does not require a “reasonable accommodation” standard or similar regulatory requirement for FAPE.
- Unlike OCR, some courts will consider whether a FAPE-related accommodation under Section 504 is reasonable.
  - If an accommodation for a student with an allergy is unreasonable or unnecessary, the district need not provide it.

## Purpose of Accommodations

- Provides supplementary aids and services
- Provides aids and services that alter the learning environment
  - Preferred seating
  - More time (for assignments and tests)
  - Special notes
- Provides equity
  - Levels the playing field

**Can Accommodations Apply for a Student on an IEP??**

# Accommodation vs. Modification

- **Accommodation**

- Any technique that alters the academic setting or environment but does not change the content of required work
- Accommodations should compensate an individual with a disability for functional limitations due to their impairment.

- **Modification**

- Any technique that alters the work required in such a way that it differs in substance from the work required of other students in the same class or grade

## Be Prepared for What's to Come

- Consider environmental, organizational, behavior, presentation, methodology, and curriculum strategies to address student's needs.
- Determine whether certain accommodations would cause fundamental alteration to service, program, or activity; impose undue financial or administrative burden on the school district; or pose a threat to personal or public safety.
- Does plan necessitate staff training?
- Do you need to facilitate a service animal in school?

## Be Definitive

- Specifically identify circumstances for accommodations.
  - Unlike SDI under IEPs, accommodations may be necessary in almost every setting or only in very specific cases. Spell this out in the plan.
  - Use classroom observations, parents and student input, and consultative services to determine the *when and where* of accommodations.
- Plan should not accommodate hypotheticals.
- Avoid discretionary terms such as “as needed,” “where appropriate,” and “upon student request.”
  - This can lead to failure to accommodate.



# Developing an Accommodation Plan

## • Appropriateness

- “Appropriate accommodations” are those that will provide an equal opportunity to be educated as nondisabled peers.
  - There may come a point when the accommodation is so expensive or requires such a fundamental change that it is no longer reasonable.
- Consider information from a variety of sources (tests, teacher recommendations, physical condition, background, etc.).
- Document and consider all appropriate information.

## • Decision Makers

- Multidisciplinary – include general education teachers as appropriate
- Parental involvement
- Members who are knowledgeable about the student, the evaluations, and the placement options

## Assessment Strategies

- Provide access to course content, but do not alter the amount or complexity of the information taught.
- You need to indicate the following:
  - Which tests
  - Of what length
  - In what areas
  - Who will provide that service
  - Where and
  - How often
- **Be as specific as possible.**

# Assessment Strategies

- **Test taking**

- Allowing open-book exams
- Giving exams orally
- Giving take-home tests
- Using more objective items (fewer essay responses)
- Allowing student to give test answers on tape recorder
- Giving frequent short quizzes, not long exams
- Allowing extra time for exams
- Reading test item to student

- **State accommodations**

- Allow extended time
- Provide a small group setting
- Read allowable parts
- Provide a scribe

## Accommodations – Environmental Strategies

- **Physical arrangement of room**
  - Seating student near the teacher
  - Seating student at rear of classroom
  - Seating student near a positive role model
  - Standing near the student when giving directions or presenting lessons
  - Avoiding distracting stimuli (air-conditioner, high-traffic area, etc.)
  - Increasing the distance between desks

# Accommodations – Presentation Strategies

## Lesson Presentation

- Pairing students to check work
- Writing key points on the board
- Providing peer tutoring
- Providing visual aides
- Providing peer note-taker
- Making sure directions are understood
- Providing a written outline
- Having child review key points orally
- Teaching through multi-sensory modes
- Using computer-assisted instruction

## Assignments and worksheets

- Giving extra time to complete asks
- Simplifying complex directions
- Reducing the reading level of the assignments
- Requiring fewer correct responses to achieve grade
- Giving shorter assignments
- Breaking work into smaller segments
- Allowing typewritten or computer printed assignments
- Reducing homework assignments

# Accommodations – Organizational Strategies

- **Organization**

- Providing peer assistance with organizational skills
- Assigning a volunteer homework buddy
- Allowing a student to have an extra set of books at home
- Sending home daily or weekly progress reports
- Developing a reward system for in-schoolwork and complete
- Providing a student with a homework assignment

# Accommodations – Behavioral Strategies

- Praising specific behaviors
- Using self-monitoring strategies
- Giving extra privileges and rewards
- Keeping classroom rules simple and clear
- Making “prudent use” of negative consequences
- Allowing for short breaks between assignments
- Cueing student to stay on task (nonverbal signal)
- Allowing legitimate movement
- Marking student’s correct answers instead of mistakes
- Implementing a classroom behavior management
- Allowing student time out of seat to run errands, etc.
- Ignoring inappropriate behaviors not drastically outside classroom limits
- Contracting with the student
- Implementing time-out procedures
- Increasing the immediacy of rewards

## Plan for Transitions

- Accommodations may not remain the same between grade levels, buildings, and school schedules.
- Plan in advance for transitions from elementary to middle school and middle school to high school.
- Alterations to a plan should be a team decision, not based on individual classroom or teacher.
  - Remember, a good plan identifies the circumstances for accommodations. Doing so should eliminate the desire to unilaterally modify the plan.



## It's just too much...

- Districts are not required to provide an accommodation, modification, auxiliary aid or service when such change would be –
  - A fundamental alteration in the nature of a service, program, or activity
  - An undue financial and administrative burden
  - For communication only – if another communication means exists

## Deciding Undue Burden

- The superintendent or designee may argue undue burden defense after considering all resources available for use in the funding and operation of the program, service, or activity.
  - A written statement explaining why the accommodation is an undue burden must accompany the superintendent's decision.
  - Even if an action is deemed to result in an undue burden, the public entity must still take other appropriate steps, when possible, to ensure the student's needs are met.
- The public entity has the burden of proving that compliance would result in an undue burden.
  - OCR has stated that districts need to consider their overall budgets when making the undue burden determination.
  - While cost is a factor, the fact that an additional cost would be incurred does not make the accommodation an undue burden.

## More is not necessarily better!

- Remember! Section 504 requires only that the district provide services that meet the student's needs "**as adequately as** the needs of non-handicapped persons" are met.
- It does not require maximizing the student's participation.
- Teams should analyze the effects of the disability on the student's performance to create appropriate options for accommodations.

## Don't Over-Accommodate

- Once created, plans obligate school staff to perform the required tasks and provide the listed services.
- As a result, only require the accommodations that the student consistently needs in order to benefit from the school's programs and activities.
- Avoid the desire to list every possible accommodation in the plan. You can always revisit and revise if certain accommodations don't work.

## Inform Staff about Handling Emergencies

- Plans have been found inadequate when the plan fails to identify the safety procedures that would be implemented to protect the student from accidental exposure, equipment failure, the persons responsible for emergency responses, or the training to be provided to staff members.
- Therefore, districts should have a plan in place to ensure that all staff members (not just the nurse) are informed of a student's allergy-related needs, including the location of the student's emergency supplies.
- Make sure that more than one person knows how to work a student's device. Have a back-up device at the ready.

## Inform Subs of Planned Accommodations

- Employees
  - Get sick
  - Take time off
  - Have emergencies
- Administrators are responsible for informing substitute staff of relevant portions of the 504 plan.
  - Have a folder in each classroom to get substitutes up to speed on student needs.
  - Update folder with new or revised accommodations. (Have you *looked* at the 504 plan lately??)
  - Don't rely on student to tell substitute about device(s).

## Case Scenario: Supplanting IEP with 504 Plan

### • Case Facts

- Student with CP was exited from special education and given 504 accommodations because of her excellent academic performance.
- District provided her with shortened writing assignments, copies of her teachers' class notes, computers for certain classes, special instruction on how to type with one hand, and four sets of textbooks for home and school use so that she need not carry books around.

### • Decision

- Court determined these were special education and related services to be provided via an IEP rather than a 504 plan.

...may in fact constitute specially designed instruction rather than 504 accommodations.

*Yankton Schl. Dist. v. Shramm (1996)*

## Address Attendance Issues Due to Disability

- Appropriately plan for absence or tardiness due to disability.
- Parent to call school regarding late or missed assignments and to alert staff regarding issues that might affect the student's school performance that day.
- Give the student a permanent laminated bathroom pass.



## Final Thoughts

### Don't Cave to the Pressure

- Accommodations are setting- and circumstance-specific
- Accommodations needed in one setting may not be necessary in all settings.
- Do not over-accommodate to make parents happy.
- Anticipate educator refusals to implement plan and direct them accordingly.
  - Use whatever muscle you need for staff to implement the plan.



Ennis Britton Co., L.P.A.  
Attorneys at Law

*Scholars in Education Law*

Cincinnati • Cleveland • Columbus

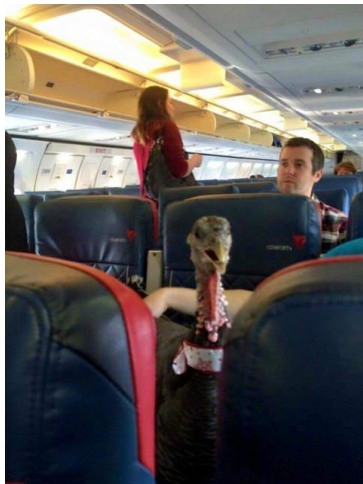
# Support Animals



## Cuddles, the Service Dog

- Beth had several serious medical conditions. So Beth's family got her a service dog.
- The dog is a hypoallergenic breed selected to accommodate her asthma, and is trained to perform numerous tasks directly related to Beth's disabilities. It can detect an oncoming seizure before humans can and is capable of alerting others that Beth is going to have a seizure. With regard to Beth's autism, the Service Dog is trained to prevent wandering (elopement), to apply deep pressure to prevent or limit meltdowns, and to disrupt stimming.
- The problem is, Beth cannot handle the dog herself and the family wants the classroom aide to handle it.

# Which One of These Is a Service Animal under Federal Law?



## Federal Definition

- Any **dog** trained to do work or perform tasks for the benefit of an individual with a disability
- **Other species** of animals, whether wild or domestic, trained or untrained, **are not** service animals.
- What's this I hear about a **miniature horse**?



**2010 Title II Regulations – 28 CFR 35.104**

## The Miniature Horse Exception

- Although the definition is limited to dogs, Title II regulations also require public entities to permit the use of a **miniature horse** by an individual with a disability if the horse has been individually trained to do work or perform tasks for the individual's benefit.
- You may consider the following **four factors**:
  - The type, size, and weight of the horse and whether the facility can accommodate based on these factors
  - Whether the handler has sufficient control
  - Whether the horse is housebroken
  - Whether the horse's presence compromises legitimate safety requirements that are necessary for safe operations

## State Law Definition of Assistance Animals

- Ohio has registration system for service animals
- R.C. 955.011 defines the following categories of service/assistance dogs:
  - Assistance dog – a guide dog, hearing dog, or service dog that has been trained by a nonprofit special agency
  - Guide dog – a dog that has been trained or is in training to assist a blind person
  - Hearing dog – a dog that has been trained or is in training to assist a deaf or hearing-impaired person
  - Service dog – a dog that has been trained or is in training to assist a mobility-impaired person

## Tasks Performed by a Service Animal

- The work or tasks performed by a service animal must **be directly related to the handler's disability**.
- When it is **not obvious** that a dog is a service animal, a school may ask only two questions:
  - Is the dog required because of a disability?
  - What task(s) has the dog been trained to perform?
- Per the DOJ, you **cannot** . . .
  - Request documentation about the training
  - Require the dog to demonstrate the task(s)
  - Inquire about the nature of the person's disability



## Service Animal or Not?

- Dog alerts when he detects a drop in blood sugar in his diabetic owner
- Dog alerts to the presence of peanuts for an individual with a severe peanut allergy
- Dog interrupts destructive behavior of a person with a psychiatric disability
- Dog provides comfort to an individual who suffers from severe anxiety
- Dog is in training to assist individual with mobility issues

## State Law on Assistance Dog Access

- R.C. 955.43
- “When either a blind, deaf or hearing impaired, or mobility impaired **person or a trainer** of an assistance dog is accompanied by an assistance dog, the person or the trainer, as applicable, is entitled to the full and equal accommodations, advantages, facilities, and privileges of all public conveyances, hotels, lodging places, all places of public accommodation, amusement, or resort, all institutions of education, and other places to which the general public is invited, and may take the dog into such conveyances and places, subject only to the conditions and limitations applicable to all persons not so accompanied.”

## State Law on Assistance Dog Access

- “Institutions of education” is defined to include any elementary or secondary school operated by a board of education.
- Exceptions listed in R.C. 955.43:
  - The dog shall not occupy a seat in any public conveyance.
  - The dog shall be leashed while using the facilities of a common carrier.
  - Any dog in training to become an assistance dog must be covered by a liability insurance policy provided by the nonprofit special agency engaged in such work protecting members of the public against personal injury or property damage caused by the dog.
- No fees may be charged for access.

## Exclusion of Service Animals

- Facility does not have to modify policies, practices, or procedures if it would “fundamentally alter” goods, services, programs, or activities.
  - How do we define “fundamentally alter”?
- Legitimate safety requirements – like what?
- Animal is not housebroken
- Handler does not maintain effective control over animal

## State or Local Restrictions and Service Animals

- Local or state vaccination requirements – YES
- General registration and licensing – YES
- Bans on specific breeds or requirement of specific breeds – NO
- Requirement that dog be spayed/neutered – NO

## Exclusion of Service Animals

- What do we mean by “maintain control”?
  - Dog must be harnessed, leashed, or tethered unless the device interferes with the tasks
  - If not on a leash or tether, handler must use voice, signal, or other “effective” means of control
  - May not repeatedly bark or otherwise disrupt

## Exclusion of Service Animals

- Must a school district provide an aide to serve as a handler?
- Perhaps yes, perhaps no . . . .
  - In Florida case, hearing officer determined that a school district is not required to provide a handler for a student's service animal. *Alboniga v. School Bd. of Broward County, Fla.*, 65 IDELR 7 (S.D. Fla. 2015).
- Carefully consider factors such as the nature of the disability and the student's age.

## What About the Rights of Others?

- Can a district prohibit a service animal if an employee or student has a severe dog allergy?
- What if this triggers a life-threatening allergic response such as an asthma attack?
- Who wins?!?



## Service Animals for Parents and Visitors

- The obligation to make reasonable modification to policies and procedures applies to parents and visitors as well!
- Under Title II, public entities must allow individuals with disabilities to be accompanied by service animals in all areas of the facilities that are open to the public. 28 CFR 35.136(g).
- Districts must afford parents and visitors with disabilities the same opportunities to participate in district programs and activities that nondisabled parents/visitors have.
- District staff should avoid making statements indicating that service animals are not permitted on campus, whether during the school day or during after-school activities.

## Employee Trainers

- Recall R.C. 955.43
- Must provide trainer of assistance dog with “full and equal accommodations, advantages, facilities, and privileges of all public conveyances, hotels, lodging places, all places of public accommodation, amusement, or resort, **all institutions of education**, and other places to which the general public is invited...”
- Must you permit an employee to bring a service dog in training to work?

## General Advice

- Be cautious about how you include a service animal in a Section 504 plan or IEP.
- Train adequate staff to:
  - Recognize key alerts or animal behaviors that directly relate to the animal's trained task(s)
  - Manage the behavior of other students who may interfere with performance of service animal tasks
  - Learn how to “assist” younger students with handling tasks such as reinforcing commands, taking the dog outside, etc.
- Consider hosting an assembly to inform students in the building about service animals, ground rules (don't feed or pet the dog while it is working), etc.

## Special Agent Fido

- Fido is a sweet Border Collie who loves children.
- Fido's family insists that Fido come to school with Johnny to help him transition from preschool to kindergarten.
- When the school refuses to permit this, Johnny's mother brings the dog to school with her each day when she visits Johnny at lunchtime, now claiming that Fido is *her* emotional support animal

## Is an Emotional Support Animal Considered a Service Animal?

- The short answer is **no**, at least not under the federal definition.
- ESA = animal that provides comfort just by being with a person. These are **not** defined as service animals because they are **not trained to perform specific tasks**.
- However, an animal that is trained to alert when a person is about to have an anxiety attack or other psychiatric episode may meet the definition of a service animal.
- Also note that an emotional support animal may qualify as a reasonable accommodation in some instances if necessary for a student's receipt of FAPE even though it does not meet the definition of service animal (call legal counsel first!).

# Sports & Extracurriculars

## Aren't extracurriculars “extra”?

- It is difficult to draw a link between extracurricular activities and the provision of FAPE under IDEA or 504.
- While IDEA focuses on affirmatively assisting students to receive an appropriate education, Section 504 guards against disability discrimination.
  - If a school offers an activity or service to anyone, it must likewise be available to disabled individuals in a nondiscriminatory manner.
  - To be nondiscriminatory in relation to disabilities, reasonable accommodations must be provided.

## OCR Guidance: January 25, 2013

- Dear Colleague letter categorized as a “significant guidance document” for school districts
  - OCR’s most comprehensive treatment of this area of law
- Identified concern with less opportunity in extracurricular athletics for disabled students
- **Themes**
  - Do not act on generalizations or stereotypes
  - Ensure equal opportunity for participation
  - Consider offering separate or different athletic opportunities



## A Quick Note on IEP Requirements

- Section 9 asks two questions relevant to extracurricular activities:
  - In what ways will the child have the opportunity to participate in nonacademic/extracurricular activities with their nondisabled peers?
  - If the child will not participate in nonacademic/extracurricular activities, explain.
- As a general matter, it is difficult to imagine a student for whom it would be appropriate to address extracurricular activities anywhere besides Section 9 except perhaps Section 1 (Future Planning) and Section 3 (Profile).

## Do not act on generalizations/stereotypes

- 504 is fundamentally an antidiscrimination law.
  - It is inherently discriminatory to make assumptions about an entire group of people based on a protected characteristic.
- In the context of extracurriculars, coaches or advisors might make assumptions about the ability of students with certain disabilities to participate in activities.
  - Add in the risks that come with “lay person” coaches who may not be as familiar with disability protections, or who may not have experience working with people with disabilities.
  - Additionally, it is not at all unusual for a coach or advisor to not have been a part of a child’s IEP or 504 team, to have ever taught the child, or to even be aware that the child has an IEP or 504 plan.

## OCR Hypothetical: Generalizations/Stereotypes

A student has a learning disability. While in middle school, she enjoyed participating in her school's lacrosse club. As she enters the ninth grade in high school, she tries out and is selected as a member of the high school's lacrosse team. The coach is aware of this student's learning disability and believes that all students with learning disabilities would be unable to play successfully under the time constraints and pressures of an actual game. Based on this assumption, the coach decides never to play this student during games. In his opinion, participating fully in all the team practice sessions is good enough.

## Hypothetical: Generalizations/Stereotypes

An eager young coach encourages the parents of a child with autism to have their child participate in cross-country. The coach is unfamiliar with the child's needs and is not provided with his IEP or any other information about his disability. The child participates in his first meet on a cold fall day. The coach discovers after all of the other competitors have made it to the finish line that the child with autism is missing. The coach runs the course in reverse and eventually finds the missing child wandering through a field. The child has frostbite in his toes and fingers and ends up having several partial amputations.

## Ensuring Equal Opportunity

- In the context of extracurriculars, this can be tricky because ability impacts participation.
  - 504 does not require that every child with a disability be the starting quarterback.
    - Tryouts are OK (with reasonable accommodations).
    - Merit-based playing time is OK.
    - There is no requirement to fundamentally alter essential aspects of the activity.
    - Safety should not be compromised.
    - Reasonable accommodations should not give an unfair advantage.

## Ensuring Equal Opportunity

- Consider the **individual needs** of the child as a **team – with parental input**
  - What is required of all participants (e.g. tryouts, consistent participation, essential skills and abilities, use of equipment)?
  - Does the child's disability present any barriers to these requirements?
  - Would accommodations would address these barriers?
  - Are these accommodations reasonable?
    - Do they fundamentally alter the activity?
    - Do they compromise safety?
    - Do they provide an unfair advantage?
    - *Does their cost create an undue burden?*

## OCR Hypothetical: Equal Opportunity

- A high school student has a disability due to a hearing impairment. He tries out for track. At the tryouts, the start of each race is signaled by the coach's assistant using a visual cue, and the student's speed qualifies him for the team in those events. The district agrees to use a visual cue to signal the start of each race during practice but refuses to do so at competitions because it is concerned that the use of a visual cue may distract other runners and trigger complaints. Two other area districts have permitted this accommodation for their hearing-impaired students in the past.
- This district decides that the student will not be provided with the accommodation and may therefore not compete in meets with the rest of the team.

## OCR Hypothetical: Equal Opportunity

A high school student was born with only one hand. This student would like to join the school's swim team. The student has the required swimming ability to participate on the team and wishes to compete. She asks the school district to waive the "two-hand touch" finish it requires of all swimmers in swim meets, and to permit her to finish with a "one-hand touch." The school district refuses the request because it determines that permitting the student to finish with a "one-hand touch" would give the student an unfair advantage over the other swimmers.



## Offering Separate or Different Opportunities

- January 2013 Dear Colleague Letter
  - “Students with disabilities who cannot participate in the school district’s existing extracurricular athletics program – even with reasonable modifications or aids and services – should still have an equal opportunity to receive the benefits of extracurricular athletics. When the interests and abilities of some students with disabilities cannot be as fully and effectively met by the school district’s existing extracurricular athletic program, the school district should create additional opportunities for those students with disabilities.”
  - “In those circumstances, a school district should offer students with disabilities opportunities for athletic activities that are separate or different from those offered to students without disabilities. These athletic opportunities provided by school districts should be supported equally, as with a school district’s other athletic activities. School districts must be flexible as they develop programs that consider the unmet interests of students with disabilities.”

## Offering Separate or Different Opportunities

- In December 2013, OCR provided additional guidance on whether districts are required to create alternative athletic opportunities for children with disabilities.
- The letter explains that it does not believe that Section 504 requires the creation of new activities for children with disabilities.
  - This guidance essentially rescinded OCR's guidance from January 2013 that seemed to require school districts to offer alternative sports options for children with disabilities.
- While a district might choose to create new programs for children with disabilities, "it is not OCR's view that a school district is required to do so."
- Goal: Level the playing field.

## Non-School-Sponsored Activities

- January 2013 Dear Colleague Letter
  - “A school district’s legal obligation to comply with Section 504 and the Department’s regulations supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate, or limit the eligibility of a student to participate, in any aid, benefit, or service on the basis of disability. Indeed, it would violate a school district’s obligations under Section 504 to provide **significant assistance** to any association, organization, club, league, or other third party that discriminates on the basis of disability in providing any aid, benefit, or service to the school district’s students.”

## “Significant Assistance”

- **Section 504 regulations**

- A district may not “Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity.”

- **Factors to consider**

- Direct financial support
- Indirect financial support
- Provision of tangible resources such as staff and materials
- Intangible benefits such as (1) official recognition and approval by the recipient; and (2) a mutually beneficial, symbiotic relationship between the entities
- The selectivity of the school's provision of privileges and resources
- Whether the relationship is occasional and temporary or permanent and long-term



# *Thank You / Questions*

- Jeremy J. Neff - [jneff@ennisbritton.com](mailto:jneff@ennisbritton.com)
- Giselle S. Spencer – [gspencer@ennisbritton.com](mailto:gspencer@ennisbritton.com)

Cincinnati Office:  
1714 West Galbraith Road  
Cincinnati, OH 45239

Columbus Office:  
300 Marconi Boulevard, Suite 205  
Columbus, OH 43215

Cleveland Office:  
6000 Lombardo Center, Suite 120  
Cleveland, Ohio 44131

