

*Foundations of Special  
Education  
&  
Recent updates*



UL Lafayette  
3<sup>rd</sup> Annual Louisiana K-12 Law Conference  
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# FAPE

- Free Appropriate Public Education – what does that mean?
  - Free
  - Individual to student based on student needs
  - Based on Evaluation & Team
- ESY – Extended school year (regression/recoupment)

# Background

- Five years as school board attorney
- Former Due Process Hearing Officer for Louisiana
- Special Education Mediator
- Teach school law at Masters and Doctoral level
- Present on law cases that impact administrators
- Prevention is better than winning as there are no real winners in special education cases.

# IEP Team



- (1) the parents of a child with a disability;
- (2) not less than 1 regular education teacher of such child (if the may be, participating in the regular education environment;
- (3) not less than 1 special education teacher
- (4) a representative of the local educational agency
- (5) a person who can interpret the instructional implications of the evaluation
- (6) at the discretion of the parent , a person with knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) whenever appropriate, the child with a disability."

# Procedure Safeguards?

- If too many procedural safeguards are violated, it may constitute substantive violation.
  - Time
  - Personnel
  - Notifications



# IEP

- Individualized Education Plan – **Rowley** (Must provide some educational benefit, what does that mean?) New standard – **Andrew F. v. Douglas County School District RE-1**
- ***“Appropriately ambitious in light of his circumstances” Every child should have the chance to meet challenging objectives.***
- **More than merely de minimis!**
  
- Rights transfer when child reaches 18 unless interdicted

# LRE

- Least Restrictive Environment
- What does this mean and who determines?
- Inclusion for all?
- What are the issues?
  - Discipline
  - Ability
  - Need



# Placement

- Program, not location
- If remove from program for more than 10 days in a school year without new IEP, it is considered a unilateral change of placement by the district.
- Issues?
  - Discipline
  - Lack of services
  - Uncertified teacher





# Related Services

- *Garret F.*
- What does this mean?
- Audiology services -- Counseling services -- Early identification and assessment of disabilities in children - Medical services - Occupational therapy - Orientation and mobility services - Parent counseling and training - Physical therapy - Psychological services – Recreation - Rehabilitation counseling services - School health services - Social work services in schools - Speech-language pathology services - Transportation

# Stay Put

- Option available to parents when seeking a Due Process Hearing (see LRE issues)
- Stay in same placement unless district obtains a Honig Injunction. (the school has to prove that if the student stays where s/he is, someone is likely to get hurt. They have to show that keeping the student out is the only way to protect everyone)
- The school can move a child for up to 45 school days (even if parent disagrees) if keeping child in current placement is likely to result in injury to self or others. For example, if a child was dealing drugs or carrying a weapon, the school can make the change temporarily.
- During those 45 school days, the school is required to provide services to address the child's behavioral problems.

# Due Process Hearing

- Requested by either party
- BOP is on party requesting hearing!
- Decision within 45 days
- Mediation is option

## Due Process Hearing Requests

- Due process hearings are designed to decide issues affecting the placement of individual children
- The only parties entitled to file due process requests are parents/guardians, school districts or students 18 years of age or older
- Results in a legally binding decision on both parties, unless the decision is changed or overturned on appeal

# Private School

- Funding
- Options
- Vouchers



# Discipline

- Up to 10 days like any other child
- Manifestation Determination
- Services continue
- FBA? Functional Behavioral Assessment
- BIP Behavioral Intervention Plan



# Student Remedies

- Attorney Fees
- Reimbursement of educational costs
- Private School placement
- Additional services, time or personnel

# Section 504

- Regular Education – not Special Education
- Impairment of major life function
- Lessons from Doe v. Withers
- Communicable diseases? What does that include?

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