



IEP Reasonably Calculated & Implemented

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Symposium**

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Provision of Free Appropriate Public Education

- FAPE means
 - Special education and related services that
 - Is at public expense
 - Meets SEA's standard
 - Includes appropriate education
 - Is provided in conformity with an IEP

IDEA's IEP Requirements

- IEP means an individualized education program that is a written statement for each child with a disability that is developed, reviewed, and revised in a meeting.

IDEA's IEP Requirements

- IEP must include (among other things):
 - A statement of measurable annual goals, including academic and functional goals.

IDEA's IEP Requirements

- IEP must include (among other things):
 - A description of how the child's progress toward meeting the annual goals will be measured.

IDEA's IEP Requirements

- IEP must include (among other things):
 - A statement of how the child will advance appropriately toward attaining the annual goals.

Congress' Intentions

- Nothing in 34 C.F.R. 300.320 is to be construed to require that additional information be included in a child's IEP beyond what is explicitly required in the Act.

Department of Education Guidance

- Developed a model IEP form to help ensure that each IEP includes the components identified in 34 C.F.R. 300.320.
- http://idea.ed.gov/download/modelform1_IEP.pdf

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Board of Education of the Hendrick Hudson Central School District v. Rowley.
 - Established the standard that an IEP must be “reasonably calculated” to enable the child to receive educational benefits.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Board of Education of the Hendrick Hudson Central School District v. Rowley.
 - Case Background.
 - Amy Rowley, hearing impaired child.
 - Educated in a regular classroom.
 - Made academic and social progress.
 - Parents wanted a sign-language interpreter.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Board of Education of the Hendrick Hudson Central School District v. Rowley.
 - Supreme Court’s Opinion.
 - Two pronged test.
 - Must first determine whether the State has complied with the statutory procedures.
 - Then, determine whether the individualized program developed through such procedures is reasonably calculated to enable the child to receive educational benefits.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Board of Education of the Hendrick Hudson Central School District v. Rowley.
 - Supreme Court’s Opinion.
 - “Open the door of public education ... [rather] than to guarantee any particular level of education once inside.”

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Board of Education of the Hendrick Hudson Central School District v. Rowley.
 - Supreme Court’s Opinion.
 - “...be sufficient to confer *some* educational benefit upon the handicapped child.”

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Board of Education of the Hendrick Hudson Central School District v. Rowley.
 - Supreme Court’s Opinion.
 - “... if the child is being educated in the regular classroom of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Cypress-Fairbanks Independent School District v. Michael F. b/n/f/ Mr. and Mrs. Barry F.
 - Expanded on the Supreme Court’s “reasonably calculated” standard with the identification of additional factors that can be reviewed in determining whether a meaningful educational benefit has been provided under the IDEA.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Cypress-Fairbanks Independent School District v. Michael F. b/n/f/ Mr. and Mrs. Barry F.
 - Case background:
 - Michael was diagnosed with ADHD and Tourette’s Syndrome.
 - Attended regular classes; needed behavioral plan which allowed for time-out and cooling off periods.
 - Received satisfactory conduct marks; needed adaptive behavior classes.
 - Parents ultimately placed him in a residential treatment center and sought tuition reimbursement.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Cypress-Fairbanks Independent School District v. Michael F. b/n/f/ Mr. and Mrs. Barry F.
 - 5th Circuit Court of Appeals reflected on four factors that can serve as indicators of whether an IEP is reasonably calculated to provide a meaningful educational benefit.
 - Known as the “Michael F. test” in the 5th Circuit.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Cypress-Fairbanks Independent School District v. Michael F. b/n/f/ Mr. and Mrs. Barry F.
 - First factor:
 - The program is individualized on the basis of the student’s assessment and performance.
 - No problem as the IEP was designed with Michael’s specific behavioral and academic problems in mind.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Cypress-Fairbanks Independent School District v. Michael F. b/n/f/ Mr. and Mrs. Barry F.
 - Second factor:
 - The program is administered in the least restrictive environment.
 - Michael was placed in educational settings with non-disabled students for at least half of every school day.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Cypress-Fairbanks Independent School District v. Michael F. b/n/f/ Mr. and Mrs. Barry F.
 - Third factor:
 - The services are provided in a coordinated and collaborative manner by the key “stakeholders”.
 - Involved Michael’s individual teachers, administrators and counselors familiar with his needs in a highly coordinated and collaborative effort.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Cypress-Fairbanks Independent School District v. Michael F. b/n/f/ Mr. and Mrs. Barry F.
 - Fourth factor:
 - Positive academic and non-academic benefits are demonstrated.
 - Passing grades at the time he left the district and
 - His ability to attend lunch and pass through the halls between class unaccompanied by school staff.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Polk v. Central Susquehanna Intermediate Unit 16.
 - Followed on Rowley’s “some educational benefit” standard and held that it is to mean something more than “de minimus”.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Polk v. Central Susquehanna Intermediate Unit 16.
 - Case background:
 - Christopher Polk was a severely developmentally disabled student.
 - Education consisted of learning basic life skills.
 - Parents argued that his program was not individually tailored to his specific needs.
 - Parents wanted a licensed physical therapist.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Polk v. Central Susquehanna Intermediate Unit 16.
 - 3rd Circuit Court of Appeals:
 - “Rowley makes is perfectly clear that the Act requires a plan of instruction under which educational *progress* is likely.”

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Thompson R2-J School District v. Luke P, by Jeff and Julie P.
 - Presented a student who exhibited severe behavioral problems in noneducational settings but achieved many of the goals and objectives set forth in his IEPs.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Thompson R2-J School District v. Luke P, by Jeff and Julie P.
 - Case background:
 - Luke was an autistic student who made progress on his IEPs goals and objectives.
 - He had difficulty, however, transferring between school to life at home.
 - His parents sought private school placement because he could not generalize his learning experiences at school to home.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Thompson R2-J School District v. Luke P, by Jeff and Julie P.
 - 10th Circuit Court of Appeals:
 - “Though one can well argue that generalization is a critical skill for self-sufficiency and independence, we cannot agree with appellees that IDEA always attaches essential importance to it.”

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- C.B., by B.B. and C.B. v Special School District No. 1, Minneapolis, Minnesota.
 - Resulted in the Court of Appeals (8th Circuit) concluding that the school district failed to make FAPE available for a learning disabled student.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- C.B., by B.B. and C.B. v Special School District No. 1, Minneapolis, Minnesota.
 - Case background:
 - C.B. was a child with a learning disability whose IEPs included an annual goal to “increase his reading skills from a readiness level to a first grade level”.
 - A subsequent 3-year re-evaluation noted that he was severely underachieving in reading and writing.
 - His parents ultimately placed him in a private school.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- C.B., by B.B. and C.B. v Special School District No. 1, Minneapolis, Minnesota.

- 8th Circuit stated:

- His IEPs were not reasonably calculated to assist C.B. in making progress.
- “There may be instances in which an educational program that results in such slight progress is sufficient to comply with the statute in light of the student’s disability, but this is not such a case.”

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- J.W. by Ward v. Unified School District Johnson County, State of Kansas.
 - The Court explained that the IDEA does not require a district to eliminate behaviors that interfere with a child’s learning. Rather, the district must consider the use of positive behavioral interventions and supports.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- J.W. by Ward v. Unified School District Johnson County, State of Kansas.
 - Case background:
 - J.W. was autistic, who, after attending 4 years in the Johnson County School District, his parents placed him in a private setting.
 - J.W. experienced rage incidents who presented self-injurious behavior.
 - His parents argued that his self-injurious behavior increased and his IEPs were not properly implemented to address the issue.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- J.W. by Ward v. Unified School District Johnson County, State of Kansas.
 - Kansas District Court’s decision:
 - IDEA contemplates that some children will have behaviors that impede or interfere with their learning.
 - IDEA does not require a school district to eliminate interfering behaviors.
 - Schools are only required to “consider the use” of positive behavioral interventions and supports to address the behavior.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- J.W. by Ward v. Unified School District Johnson County, State of Kansas.
 - Kansas District Court’s decision:
 - IDEA contemplates that some children will have behaviors that impede or interfere with their learning.
 - IDEA does not require a school district to eliminate interfering behaviors.
 - Schools are only required to “consider the use” of positive behavioral interventions and supports to address the behavior.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **Passage from grade to grade** – an indicator if placed in a regular classroom setting.
 - Rowley court.
 - In Cypress, the court noted that Michael had presented passing grades at the time that he left the district.
 - How should this factor be assessed for a student’s special education classroom placement?

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **Present a certain degree of independent and self-sufficiency** – how much is required?
 - Rowley court – “we cannot conclude that self-sufficiency was itself the substantive standard which Congress imposed on the States”.
 - Polk court – self-sufficiency is one goal of education, where possible.
 - Cypress court – district showed progress.
 - Thompson court – not provided in IDEA.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **Educational benefit is proven to be rooted within the child’s unique needs.**
 - Rowley court – appropriate to the child’s learning capacities.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **Do not have to “maximize the benefits nor provide every service.**
 - Rowley court – Congress did not mean a “potential-maximizing education”.
 - Johnson County court – not required to provide every service that would benefit a student if it has found a formula that can reasonably be expected to generate *some* progress on that student’s IEP goals.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - You still need a plan that contemplates that *progress will be made*.
 - Polk court – Supreme Court did not mean “some” as opposed to no benefit”.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **The program is individualized on the basis of the student’s assessment and performance.**
 - Michael F. Test.
 - Tailored to the student’s individual needs.
 - Thompson court – “creation of individualized programs reasonably calculated to enable the student to make some progress towards the goals within that program”.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **The program is administered in the least restrictive environment.**
 - Michael F. Test.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Review topics discussed by the courts:
 - **The services are provided in a coordinated and collaborative manner by the key “stakeholders”.**
 - Michael F. Test.
 - Reflect on the key district personnel is outlined by the court in Cypress.
 - Note that the Thompson court observed that virtually every one of the substantive goals recommended by the student’s parents and experts wer incorporated into the new IEP.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **The services are provided in a coordinated and collaborative manner by the key “stakeholders”.**
 - Johnson County court – “J.W.’s parents had a full opportunity to participate in the IEP development process.
 - Johnson County court – The parent’s autism consultant agreed the team was using a number of behavioral supports to deal with the child’s behaviors.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **Positive academic and non-academic benefits are demonstrated.**
 - Michael F. test.
 - Cypress court – educational benefit was presented by numerous district personnel.

Meeting the “Reasonably Calculated” Test in the Provision of FAPE

- Key discussion topics gleaned from these cases:
 - **One size does not fit all ... do not rely on any one test.**
 - Rowley court – “We do not attempt to establish any one test for determining the adequacy of educational benefits.
 - There is no generic formula that can be applied.

Discussion & Questions

Thank You.

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