

Parent Engagement at the IEP Meeting

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1

History of IDEA

2

PL 94-142 EHA

- Education of All Handicapped Children Act of 1975 Strengthened educational rights specified in PL 93-380 Fed gov't committed financial contributions Permanent legislation with no expiration Children 3-21 FAPE IEP and LRE

3

Based on Congress' Spending Power

- If State accepts the federal money, then the state is required to comply with IDEA and provide a Free Appropriate Public Education to ALL children with disabilities.
- All states now accept IDEA money.

4

United States Constitution

- 14th Amendment prohibits states from:
 - Limiting the rights of its citizens
 - Depriving anyone of due process, equal treatment, protections of other amendments
 - Denying any citizen equal treatment of laws
- There is right to due process and equal protection as it relates to education.
- But no right to education itself under Constitution.

5

EAHCA - Findings

- Congress made significant findings when it enacted EAHCA in 1975.
- Section 1400(c)(2) includes the statements that the needs of children with disabilities were not being fully met, and that 1 million children with disabilities were being excluded from public schools.
- Emphasized ACCESS to education.

6

IDEA - Findings

- In 1990, Congress found there had been success in providing access to education for children with disabilities. 1400(c)(3)
- But Congress also found that the success was impeded by low expectations and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities. 1400(c)(4)
- 20 years of research and experience demonstrated ways to make education more effective. Uses term "maximum extent possible" or "maximize accessibility" five times. 1400(c)(5)
- Congress was concerned with mislabeling and high dropout rates of minority children with disabilities. 1400(c)(12)

7

IDEA – Purposes, 1400(d)

- Provide FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living. IDEA added to prepare for further education.
- Protect rights of children and parents.
- Assist States and local agencies in providing education.
- Assist States in providing early intervention services for infants and toddlers.
- Improve educational results for children with disabilities.
- Assess and ensure effectiveness of education.

8

IEPs

9

Individualized Education Program (IEP)

- A written statement for a child with a disability that is developed, reviewed, and revised in a meeting.

20 U.S.C. 1414; 34 C.F.R. 300.320

10

IEP In Effect

- IEP must be in effect at the beginning of each school year.
- IEP must be in effect before special education and related services are provided to an eligible student.

20 U.S.C. 1412; 34 C.F.R. 300.342

11

Content of IEP
34 C.F.R. 300.320

- A statement of the student's **present level of performance**, including
 - how student's disability affect involvement and progress in the general education curriculum

12

Content of IEP
cont'd

- A statement of annual goals and short-term objectives (or bench-marks) related to
 - meeting student's needs that result from the disability to enable student to be involved in and progress in the general education curriculum.
 - Meeting each of the student's other educational needs that result from the student's disability.

13

Content of IEP
cont'd

- A statement of the special education and related services and supplementary aids and services to be provided to the student and a statement of the program modifications or supports for school personnel that will be provided so that the student can:

14

Content of IEP
cont'd

- 1.To advance appropriately toward attaining annual goals
- 2.To be involved and progress in the general education curriculum in accordance with student's present level of performance and to participate in extracurricular and other nonacademic activities.
- 3.To be educated and participate with other children with disabilities and without disabilities.

15

Content of IEP
cont'd

- An explanation of the extent, if any, to which the student will not participate with non-disabled students in the regular class.
- A statement of any individual modification in the administration of State or district-wide assessments of student achievement that are needed in order for the student to participate in such assessments.

16

Content of IEP
cont'd

- The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.

17

Content of IEP
cont'd

- Progress statement –
 - A statement of how the student's progress toward annual goals will be measured and
 - A statement of how the student's parents will be regularly informed of the student's progress toward annual goals and the extent to which progress is sufficient to enable the student to achieve the goals by the end of the year,

18

Content of IEP
cont'd

- Transition Plan for high school age students
 - Beginning at age 16, and updated annually, a statement of transition service needs of student.
 - Beginning at age 16, a statement of needed transition services for student, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.
 - Beginning one year before student reaches age of majority, a statement that student has been informed of rights that will transfer upon reaching the age of majority.

19

Annual Goals

- A positive statement that describes an observable skill or behavior that is measurable and reasonably attainable in one school year
 - Measurable
 - Specific
 - Descriptive

20

Examples of Annual Goals

- To be actively engaged in partner learning activities by following 80% of all directions in math and science.
- To increase initiations with classmates by 50% during school activities.

21

Instructional Objectives: Conditions

- State the circumstances under which we expect the behavior/skill to occur.
 - Where
 - When
 - With whom
 - In response to
 - With what supports

22

Examples of Conditions

- During large group activities...
- When asked a question....
- After being read a chapter in the social studies text....
- In the hallways and during transitions...
- When given an instruction during whole group instruction...

23

Instructional Objectives: Behavior

- What the student will do (in observable terms so a stranger could observe and evaluate it)
 - "Complete double digit addition and single digit subtraction" NOI "increase computation skills"
 - "Correctly spell and use in a sentence 25 new words from each science and social studies unit" NOI "increase vocabulary"

24

Instructional Objectives: Behavior
(continued)

- "participate in two academic classes by:
 - Raising hand to get attention or ask a question of the teacher
 - Speaking out only in response to teacher or peer requests
 - Speaking to peers in a quiet voice during instruction that allows student interactions"
- NOT** "behaves appropriately in class"

25

Supplementary Aids and Services
34 C.F.R. 300.42

- Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

26

Supplementary Aids and Services
cont'd

- Designed to help students with disabilities obtain three benefits from education:
 1. To advance appropriately in attaining IEP goals
 2. To be involved in and to progress in the general curriculum and to participate in extracurricular and non-academic activities.
 3. To be educated and participate with other students with disabilities and those without disabilities.

27

Supplementary Aids and Services cont'd

- Teams should consider the *full range* of supplementary aids and services.
- The regular education teacher is to assist the IEP team in determining the supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student.

28

Supplementary Aids and Services cont'd

34 C.F.R. 300.208 Permissive Use of Funds

- Federal funds provided pursuant to the IDEA for special education and related services and supplementary aids and services provided in a regular education class to a student with a disability may benefit one or more students without disabilities.

29

Categories of Supplementary Aids and Services

- Environmental/physical
 - Providing preferential seating
 - Altering physical arrangement of classroom
 - Reducing distractions
 - Providing quiet corner or study carrel
 - Modifying equipment, adapting writing utensils
 - Assistance in maintaining uncluttered space
 - Providing space for movement/breaks

30

Categories of Supplementary Aids and Services cont'd

- Instructional
 - Teaching to learning style
 - Modifying materials
 - Providing resource room instruction
 - Varying method of instruction/content of lesson
 - Providing alternative assignments
 - Providing notes or study sheets
 - Providing books on tape

31

Categories of Supplementary Aids and Services cont'd

Staff Supports:

- enhanced staffing
- one-to-one aide
- co-teaching arrangement
- staff development or training
- planning time

32

Categories of Supplementary Aids and Services cont'd

Social/Behavioral Supports

- immediate feedback
- rest breaks
- behavioral intervention strategies
- positive behavior support plan
- varied reinforcement system
- circle of friends
- peer buddies
- counseling

33

Categories of Supplementary Aids and Services cont'd

- **Social/Behavioral supports cont'd**
 - study skills instruction
 - visual daily schedule
 - checklists
 - notice or warning before change in activities
 - daily check-in with case manager/mentor
 - verbal/visual cues regarding transitions, directions, or staying on task

34

IEP Implementation

- Must be implemented "as soon as possible" following IEP meetings.
- Must be accessible to each regular education teacher, special education teacher, service provider, and other providers who are responsible for implementation.

35

IEP Implementation cont'd

- Each teacher and service provider must be informed of specific responsibilities related to implementing IEP.
- Each teacher and service provider must be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with IEP.

36

IEP Team
34 C.F.R. 300.321

- Local school system must ensure that
 1. All necessary individuals participate.
 2. The IEP team reviews the student's IEP at least annually.
 3. The IEP team revises the IEP as appropriate to address any lack of expected progress toward the annual goals or the general curriculum.
- Parents are equal participants

37

IEP Team Composition
34 C.F.R. 300.344(a)

- Parents of the student
- Regular education teacher if ...
- Special education teacher/provider
- Representative of school system
 - Provides or supervises special education
 - Is knowledgeable about the general curriculum
 - Is knowledgeable about resource availability

38

IEP Team Composition
cont'd

- Individual to interpret evaluations
- Other individuals with knowledge/expertise
- Student, if appropriate

39

Responsibilities of IEP Team

- To determine student's need for evaluation
- Determine eligibility
- Determine how the student's disability affects his or her involvement in and progress in the general curriculum.
- Determine if behavior that is the subject of disciplinary action is a manifestation of the student's disability.

40

Responsibilities of IEP Team cont'd

- Develop, review, or revise IEP by reviewing information in order to
 - Determine present levels of performance
 - Identify educational needs
 - Define services required to meet needs
 - Describe accommodations and SAS to meet IEP goals and participate in general curriculum
 - Determine how student's disability affects involvement and progress in general curriculum

41

Role of IEP Team Members

- To bring information to the team regarding the student's:
 - strengths and needs
 - learning style
 - interests and motivations
 - interactions with peers
 - successful strategies and supports

42

Role of Regular Education Teacher
34 C.F.R. 300.324

- Participate in the development, review, and revision of student's IEP
- Assist in determination of appropriate positive behavior interventions & strategies
- Assist in determination of supplementary aids and services, program modifications, and supports for school personnel

43

IEP Team Meeting Functions

- Communication vehicle
- Opportunity for informed joint decisions
 - Needs
 - Goals
 - Involvement in general curriculum
 - Participation in regular education environment
 - Supportive services

44

Why and When to Have an IEP Meeting

- Annual Review
- Review progress
- Review assessments/evaluations
- Changes contemplated to goals, services, or placement
- Reasonable request of parents
- Manifestation determination

45

Parental Notice
34 C.F.R. 300.322

- Early enough to allow attendance.
- Mutually convenient time and place.
- Early prior notice may be waived by the parents to allow an emergency meeting.

46

Written Notice to Parents

- Written notice must contain
 - Purpose of meeting
 - Date, time, and location
 - Persons invited (along with their titles)
 - Parent's right to invite persons with knowledge or expertise
 - Availability of accommodations

47

IEP Team Considerations
34 C.F.R. 300.324

- In developing or revising IEP, team must consider:
 - Student's strengths
 - Results of recent evaluations
 - Results of student's performance on state/district-wide assessments

48

IEP Team Considerations cont'd

- For each student, IEP team must consider:
 - Communication/language needs including opportunities for direct communication with peers/staff in student's mode of communication
 - Whether student needs assistive technology
 - Whether student is eligible for extended school year (ESY) services

49

Specific IEP Team Considerations

- Communication and language needs for students who are deaf or hard of hearing
- Strategies, including positive behavior interventions, and supports to address behavior for students whose behavior impedes learning
- Language needs for students with limited English proficiency
- Instruction in Braille for students who are blind or visually impaired

50

An IEP Meeting Agenda

- Opening remarks, purpose, introductions
- Procedural safeguards
- Review assessments and evaluations
- Review progress on current IEP goals
- Determine strengths and needs
- Determine present level of performance
- Discuss IDEA required considerations

51

An IEP Meeting Agenda
cont'd

- Develop and/or review draft goals and objectives
- Approve goals and objectives
- Determine special education and related services
- Determine appropriate supplementary aids and services

52

An IEP Meeting Agenda
cont'd

- Determine placement
- Determine eligibility for extended school year (ESY) services
- Transition planning
- Assign responsibility for tasks and follow-up
- Schedule review

53

FAPE

54

Free Appropriate Public Education (FAPE)
 34 C.F.R. 300.17

- Special Education and Related Services
- Provided at public expense
- To meet the unique needs of student so that student can:
 - Benefit from education
 - Progress in general curriculum

55

Special Education
 34 C.F.R. 300.39(a)

- "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability"

56

Specially Designed Instruction
 34 C.F.R. 300.39(b)

"Specially designed instruction means adapting, as appropriate to the needs of an eligible child ... the content methodology, or delivery of instruction to address the unique needs of this child that result from that child's disability and to ensure access of the child to the general curriculum so that he or she can meet the educational standards ... that apply to all children."

57

Board of Educ. v. Rowley,
458 U.S. 176 (1982)

- Parents of deaf student in first grade regular class sued to compel school to provide a sign language interpreter.
- Amy had successfully completed Kindergarten without SLI, and was an above average student getting passing grades and advancing easily from grade to grade.
- Supreme Court found that the purpose of the EAHCA was not to maximize each child's potential.
- Supreme Court held that the basic floor of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

58

Rowley's two-prong analysis


- Supreme Court established a twofold inquiry for suits brought under the EAHCA:
 - 1. Has the State complied with the procedures set forth in the Act?
 - 2. Is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefit?
- If these requirements are met, then the State has provided FAPE.
- Rowley held that FAPE does not mean "to maximize" each child's potential, but that the education had to be "sufficient to confer some educational benefit."

59

Andrew F. v. Douglas County School District, RE-1, 580 U.S. 386 (2017)


- Input of the child's parents is just as important as school district personnel's
- IDEA's requirements as a mere procedural checklist. It is through the requirements in the statute and regulations that a school district delivers a FAPE. These are substantive requirements and include evaluations sufficiently comprehensive to identify all educational needs and assessing progress and making corrections/adjustments to the programming in the face of a lack of progress.

60




- The essential function of an IEP is to provide for academic and functional advancement. "A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act" in passing IDEA.
- Advancement from grade to grade with actual access to the general education curriculum is the expectation for all children. If it is not a reasonable prospect for a child to achieve on grade level without a modified curriculum, "his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children. . . .The goals may differ, but every child should have the chance to meet challenging objectives."

61



- IEP must be based on an individualized evaluation of the child's **potential for growth.** School districts must consider the child's potential for growth, not just her present levels.
- "The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a **prospective judgment** by school officials."


62



Implications of the "forward-looking" standard of *Endrew F.*


- In combination with the last paragraph, which requires school authorities "to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances," school authorities have an obligation to inform themselves about the child's potential for growth.

63




- The instruction offered must be "specially designed" to meet a child's "unique needs" through an "[i]ndividualized education program," §§ 1401(29), (14) (emphasis added). An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth.

64



- As the Supreme Court explained, the "procedures are there for a reason" and provide insight into what it means to meet the unique needs of a child with a disability.

65



D.T. v. Cherry Creek Sch. Dist. No. 5, 55 F.4th 1268 (10th Cir. 2022)

"The basic vehicle to achieve FAPE is the development of an individualized education plan (IEP) for all eligible students. IDEA requires an IEP for each child with a recognized disability."

66

G.W. v. Boulder Valley Sch. Dist., Civil Action No. 16-cv-00374-PAB-SKC, 2019 U.S. Dist. LEXIS 159007 (D. Colo. Sep. 18, 2019)

- the central mechanism for ensuring delivery of a FAPE in the least restrictive environment is the individualized education program ("IEP"), a "written statement for each child with a disability" that identifies the child's present level of performance, the child's short- and long-term goals, objective criteria for measuring the child's progress, and the supplementary aids and services necessary to meet the child's educational needs."(citations omitted);

67

Murray by and through Murray v. Montrose Cty. Sch. Dist., 51 F.3d 921, 925 (10th Cir. 1995)

- "The IEP is the basic mechanism through which th[e] goal of [providing a FAPE] is achieved for each disabled child."

68

Parental Consent

69

Parental Consent

- Consent must be fully informed. 300.9
- Consent must be obtained by public agency:
 - Prior to initial evaluation. 1414(a)(1)(D)(i)(I); 300.300(a)
 - Prior to re-evaluation. 1414(a)(1)(D)(i)(II); 300.300(c)
 - Prior to provision of special education and related services. 1414(a)(1)(D); 300.300(b)
 - Prior to release of documents containing identifying information. 1412(a)(8), 1417(c)

70

Consent for Initial Evaluation

- Consent is trigger for initial evaluation process
- Evaluation must be conducted within 60 days of receiving parental consent
 - With state option to change time limit and may be longer than 60 days.

1414(a)(1)(C)(i); 300.301(c)(1)

71

Consent for Initial Provision of Services

- Consent for evaluation is not consent for services
- Affirmative parental consent for services must be given
- Responsibility for Obtaining Parental Consent: on schools

72

Consequences of Parental Failure to Consent to Provide Services

- Not entitled to use due process procedures.
- Agency held harmless for failure to provide FAPE
- Agency not required to convene IEP meeting/ develop IEP

300.300

73

Definition of Parent

- Natural or adoptive parent
- Foster parent
- Legal Guardian (but not State if child is ward of the state) (not guardian ad litem)
- Individual acting in place of parent with whom child lives or has legal responsibility
- Surrogate parent (appointed to act as parent)

1401(23)

74

Definition of Parent

- If more than one "parent," biological or adoptive parent who attempts to act as parent for educational decisions is presumed to be the parent, unless they do not have legal authority to make educational decisions.
- Court can identify a specific person to act as the parent (this would overcome presumption for biological or adoptive parent).

300.30

75

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78



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- Agency not required to convene IEP meeting/ develop IEP 300.300

79



Parental Participation

80



- Parents are key members of the IEP Team, 20 U.S.C. § 1414(d)(1)(b); 34 C.F.R. § 300.321(a)(1). And as the U.S. Supreme Court has repeatedly emphasized, parental participation in the IEP decision-making process is essential to safeguarding the educational rights of children with disabilities that Congress sought to protect under IDEA. The statute's "procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances." *Endrew F.*, 580 U.S. at 391. "Congress repeatedly emphasized throughout the Act the importance and indeed necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness." *Honig v. Doe*, 484 U.S. 305, 311 (1988).

81

Urban v. Jefferson County Sch. Dist. R-1, 89 F.3d 720, 726 (10th Cir. 1996)

- Challenges to the adequacy of an IEP can be either procedural or substantive.

82


Provide all the information at IEP meetings

- Otherwise..... courts have found that procedural violations that deprive parents of critical information that impedes their ability to participate in the decision-making process cause a deprivation of FAPE.

83


- M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1197-98 (9th Cir. 2017) (school district's unilateral revision to IEP after meeting violated right of parental participation);
- Doug C.*, 720 F.3d at 1047 (failure to include parent in IEP meeting clearly infringed on his ability to participate in the IEP formulation process, so that student was denied a FAPE);
- Indep. Sch. Dist. No. 413 v. H.M.J.*, 123 F. Supp. 3d 1100, 1111 (D. Minn. 2015) (by simply indicating that student did not qualify for special education without fully considering Other Health Disabilities criteria, school district deprived parents of meaningful participation, resulting in substantive violation);

84



- *C.P. v. N.J. Dep't of Educ.*, No. 19-12807, 2022 U.S. Dist. LEXIS 158147, at *33 (D.N.J. Sept. 1, 2022) (significant delays in due process hearing system deprived parents of the right to take part in the decision-making process regarding the provision of FAPE to their children thereby denying substantive right of participation);
- *Knox v. St. Louis City Sch. Dist.*, No. 18-cv-216, 2020 U.S. Dist. LEXIS 114445, at *31 (E.D. Mo. June 30, 2020) (failure to consider eligibility under "Other Health Impairment" deprived grandmother full participation in the IDEA process);

85




- *Beckwith v. District of Columbia*, 208 F. Supp. 3d 34, 46-47 (D.D.C. 2016) (failure to provide required information about restraints and to produce relevant staff people at MDT meeting impeded parental participation and deprived student of FAPE);
- *Bell v. Bd. of Educ. of the Albuquerque Pub. Schs.*, No. CIV 06-1137 JB/ACT, 2008 U.S. Dist. LEXIS 108748, at *87-88 (D.N.M. Nov. 28, 2008) (D. N. Mex. Nov. 28, 2008) (holding school district failure to provide correct diagnosis to parent was a denial of FAPE because it was "a lack of reliable information on which to rely on in advocating for [the student] and meaningfully participate in the IEP process.");

86




Evaluations

87



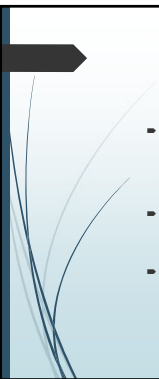
- In 2004 Congress found expanded on the purpose for the Act and asserted that the IDEA also existed "to ensure that the rights of children with disabilities and parents of such children are protected," 20 U.S.C. § 1400(d)(1)(A)(2004), and "to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities," *Id.*, § 1400(d)(3)(2004). Along these lines, Congress clarified that the procedures set out in the law were not perfunctory but were set out because Congress intended that all evaluations would be genuinely considered in the planning process, as would the concerns of the parent.

88



- For example, all districts must ensure that, beyond assessment in areas of known disability, "the child is [also] assessed in all areas of suspected disability," 20 U.S.C. § 1414(b)(3)(2004); see also 20 U.S.C. § 1412(a)(6)(B)(2004); 34 C.F.R. § 300.304(e)(1)-(7)(2006). Additionally, "assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. . . ."

89



- An Office for Civil Rights (OCR) investigation in 2008 found a violation of a student's rights under 504 for failure to evaluate the student after frequent absences from school due to illness. *Laramie County (WY) School District #1*, 51 IDELR 169 (OCR 2008)(Although the district developed a Section 504 plan for the student, the plan was not based on any evaluations or developed by persons knowledgeable about the student.);
- Goshen (WY) Schools, 70 IDELR 135 (OCR 2017)(student's discipline record spanned more than a decade and the frequency and severity of those incidents, along with the student's below-average grades, should have prompted the district to refer the student for an evaluation.);
- OCR investigation on failure to evaluate for dyslexia. OCR found no violation after a student was evaluated during COVID 19 closures rather than waiting for school to resume in person. *Teton County (WY) School District*, 78 IDELR 78 (November 10, 2020).

90

Remember FBAs and BIPs as evaluations and fidelity

- A hearing decision from 2017, *Fremont County School District #25*, 71 IDELR 224 (October 4, 2017), found:
 - A district should implement fidelity checks routinely to ensure that behavioral intervention plans of students are not disregarded. This student's BIP called for redirecting the student to the least restrictive intervention and allowing the student to request a break to avoid escalation of a negative behavior. By failing to follow that plan when the student's behaviors escalated, the district could not later find that the teen's threatening conduct was a manifestation of this disability at an MDR.

91

- The student was returned to school and the behavior was deemed a manifestation of his disability (Other Health Impaired).

92

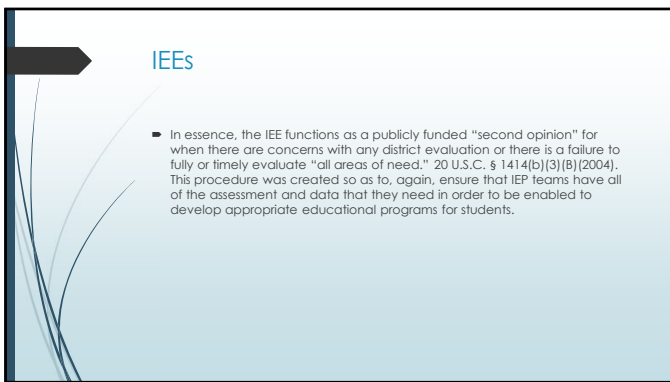
E.S. v. Conejo Valley Unified Sch. Dist., No. CV 17-2629 SS, 2018 WL 3630297, at *14 (C.D. Cal. July 27, 2018).

- constitute a procedural failure when the failure interferes with the parent's ability to participate in the IEP process

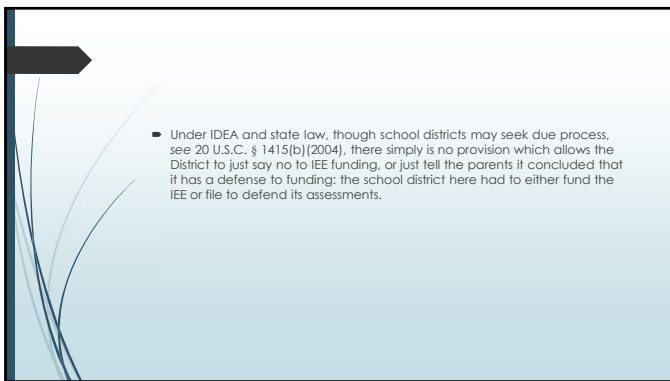
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95



96




- a parent's request for an IEE does not automatically entitle the student to one. For example, once school districts demonstrate that their assessors followed proper procedures and adhered to the requirements of 20 U.S.C. § 1414, students are rarely awarded an IEE at public expense.

97



Dispute Resolution

98



Strategies for getting consensus

- Listen to parent concerns
- Provide all the information the team is considering
- No surprises at the IEP team meeting
- Anticipate parental questions so the team is prepared
- Adjourn and come back another day if the meeting gets heated
- Provide data to the parents with an explanation

99

Dispute Resolution

- Facilitated IEP meeting
- Mediation
- State complaints (parents can file) and school team can address

100

*Smith v. Cheyenne Mt. Sch. Dist. 12, 2017 U.S. Dist. LEXIS 100475, *17 (D. Colo. May 11, 2017).*

- a 10th circuit case explained that the failure to object to IEP team decisions until nearly two years after the IEP meeting concluded constitutes a waiver or a forfeiture of claims.

101

Questions?

102
