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Legal Services


The 10-day Drop Meets IDEA: Protecting FAPE When Students Stop Attending.

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Today's Agenda

- Chronic Absenteeism
- Understanding Wyoming's 10-day attendance drop requirements
- Connecting attendance drops to IDEA and FAPE obligations
- Identifying required actions for leaders and teachers

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Overview of Chronic Absenteeism: Legal Obligations






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Think About . . .

- ❑ IDEA never intended to serve as a substitute for the existing functions and responsibilities of state and local truancy authorities, juvenile justice systems or mental health systems.
- ❑ IDEA recognizes that students may struggle in school for reasons other than disability, and that special education services are only available to student who qualify due to their disability.
- ❑ A student's excessive absenteeism is a significant concern for school districts because it potentially implicates their **child find duties, eligibility determinations, and placement decisions.**



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Think About . . .

- ❑ U.S. Department of Education: 2021-22, two-thirds (66%) of enrolled students attended a school with high or extreme levels of chronic absence. This means at least **one of five** students in their school was **missing almost four weeks** throughout the school year.
- ❑ Increased from levels before the COVID-19 pandemic: 25% of all enrolled students attended schools with high or extreme chronic absence.
- ❑ Not only is teaching and learning more challenging when large numbers of students are frequently missing class, but such elevated levels of chronic absence can also easily overwhelm a school's capacity to respond.
- ❑ Attendance Works, Rising Tide of Chronic Absence Challenges Schools, October 12, 2023, found at <https://www.attendanceworks.org/rising-tide-of-chronic-absence-challenges-schools/>.



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Think About . . .

- ❑ According to the USDOE for Wyoming:
- ❑ Across all Districts, the chronic absenteeism rate for the 2022-2023 school year was 34%
- ❑ Students with disabilities are 36% more likely to experience chronic absenteeism than students without disabilities.
- ❑ [U.S. Department of Education: Chronic Absenteeism, https://www.ed.gov/teaching-and-administration/supporting-students/chronic-absenteeism](https://www.ed.gov/teaching-and-administration/supporting-students/chronic-absenteeism)(last visited February 24, 2026).



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Truancy Vs. Chronic Absence



TRUANCY

- Counts only unexcused absences
- Emphasizes compliance with school rules
- Relies on legal & administrative solutions

Vs.

CHRONIC ABSENCE

- Counts all absences: excused, unexcused & suspensions
- Emphasizes academic impact of missed days
- Uses community-based, positive strategies





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Legal Standard

- ❑ W.S. 21-4-101(a)(i) "Unexcused absence" means the absence, as defined in the rules of the local board of trustees;
- ❑ W.S.21-4-101 (a)(ii) "Habitual truant" means any child who disobeys reasonable and lawful demands of the child's parent, guardian, custodian or other proper authority to attend school [] and as further defined in the rules of the local board of trustees [];
- ❑ W.S. 21-4-101(a)(vii) "Willful absenteeism" means exceeding the limit of unexcused absences as defined in the rules of the local board of trustees; when the excess absences are the result of a parent's, guardian's or custodian's willful failure, neglect or refusal to require a child's regular attendance at school.



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What Is the 10-Day Drop?

WITHDRAWN

- ❑ Wyoming allows schools to drop students after 10 consecutive unexcused absences, for the calculation of Average Daily Membership.
- ❑ W.S. 21-13-101(a) (i):
 - ❑ "Average daily membership" or "ADM" means the aggregate number of pupils present plus the aggregate number of pupils absent, divided by the actual number of days the school is in session for the year. . . .
Pupils who have withdrawn from school or who have been absent for more than ten (10) consecutive calendar days shall not be counted as members;



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What Is the 10-Day Drop?

WITHDRAWN

- ❑ 206-8 Wyo. Code R §§ 8-8 (in part):
 - (b) Schools shall exclude from their membership students for whom the school district is no longer actively or prospectively providing appropriate instructional services. Examples include, but are not limited to, students who:
 - (i) Withdraw from school;
 - (ii) **Are absent more than ten (10) consecutive school calendar days;**
 - (iii) Are full-time virtual education students **not meeting participation** requirements for more than **ten (10) consecutive program days** as defined by Department rules and regulations;



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What Is the 10-Day Drop?

WITHDRAWN

□ W.S. 21-4-104

(a) . . . It shall be the duty of each attendance officer to:

(i) Counsel with students, parents, guardians or custodians and teachers; and to **investigate the causes of unexcused absences, habitual truancy and willful absenteeism**;

(ii) **Give written notice** to the parent, guardian, or custodian of any child having an **unexcused absence that the attendance of such child at school is required by law**, [].

If after such notice has been given, the child has **continued unexcused absences** [] and the attendance officer **reasonably believes** that the unexcused absences were **due to neglect** [] **willful absenteeism or habitual truancy**, the attendance officer shall **proceed [to notify the board and the district attorney, who may initiate proceedings under the Child Protection Act.]**



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Legal Standard-IDEA

□ IDEA does not address truancy or excessive absenteeism.

□ IDEA does tell us how the IEP team should address behavior.

“In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.”

34 C.F.R. § 300.324(a)(2)(i).

□ More on this later...



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What Is the 10-Day Drop?

WITHDRAWN

- ❑ This is an attendance action—**not** automatically an IDEA action.
- ❑ However, dropping a student may impact FAPE.
- ❑ Special education protections continue to apply.



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R.B. v. Mastery Charter Sch., 762 F. Supp. 2d 745 (E.D. PA 2010).

- ❑ 19-year-old student diagnosed with Trisomy 21 (Down's Syndrome).
- ❑ R.B.'s academic level of functioning ranges between a second to third grade instructional level.
- ❑ She also has "hypermobility joints," a heart murmur, soft palate, and sleep apnea.
- ❑ R.B.'s cognitive and physical disabilities substantially impede her ability to participate in the general classroom setting.
- ❑ Her IEP requires Therapeutic Support Staff and one-to-one academic aides.



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R.B. v. Mastery Charter Sch., 762 F. Supp. 2d 745 (E.D. PA 2010).

- ❑ Occasionally, Mom served as the one-to-one aide, due to staffing and cost considerations.
- ❑ Due to her health needs, the charter school modified its “strict” attendance policy requirements. (sleep apnea and heart condition made it impossible to consistently wake up for school and caused her to miss school frequently).
- ❑ Mastery did not record attendance for R.B., nor did they pursue standard truancy protocols in response to R.B.'s frequent absences.



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R.B. v. Mastery Charter Sch., 762 F. Supp. 2d 745 (E.D. PA 2010).

- ❑ In March, a conflict developed between Mastery and the parent, and the Mastery sent mom a letter indicating that she was “no longer welcome to enter our building unless [she had] a scheduled appointment with an administrator.”
- ❑ Mom interpreted this as a no-trespass letter, which made it “impossible for mom to escort R.B. into school daily.
- ❑ Soon after the letter, mom stopped bring R.B. to school.



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R.B. v. Mastery Charter Sch., 762 F. Supp. 2d 745 (E.D. PA 2010).

- ❑ In April, for the first time, Mastery began marking R.B. absent.
- ❑ In May, there was an internal email regarding how to "code" R.B.'s attendance and noted concerns that parents' "decision to keep [R.B.] out of school due to legal action [was] hurting our attendance figures."
- ❑ In June, after sending three written communications to the parent, and pursuant to Pennsylvania State Law, Mastery unilaterally dropped R.B. from enrollment.



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R.B. v. Mastery Charter Sch., 762 F. Supp. 2d 745 (E.D. PA 2010).

- ❑ Pennsylvania law provides that a student, who is "at any time in the school term absent from school for 10 consecutive school days, shall thereafter be removed from the active membership roll [of the district]" subject to certain exceptions. 22 Pa. Code § 11.24.
- ❑ Acting consistent with this provision, in R.B. a Pennsylvania charter school removed a student from the rolls of its membership after the student was absent for more than 10 days.
- ❑ At the time of the Due Process Complaint, the student was not enrolled in any other district or charter school.



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R.B. v. Mastery Charter Sch., 762 F. Supp. 2d 745 (E.D. PA 2010).

- ❑ The Due Process Complaint raised the issue of what the student's pendent placement was, as the last agreed-upon IEP was for placement at the charter school, and unilateral dis-enrollment was a change of placement that required procedural safeguards
- ❑ The court found that:
 - ❑ The dis-enrollment of a student via the attendance regulations is a change of placement, and at least requires parent notice and possibly consent.
 - ❑ The clear language of the State regulations was irrelevant, as it is preempted by the IDEA.



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Key Quote

“ ”

- ❑ The court:
 - ❑ “There is no evidence that Mastery provided Parent with a copy of the Procedural Safeguards for special education students, attempted to convene a meeting of R.B.'s IEP team, or considered whether or not R.B.'s absences were a manifestation of her disability prior to dropping R.B. from the rolls. Since the disenrollment was unilateral, it occurred without the informed consent of Parent.”




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Key Quotes

“ ”

- The court:
 - “Although there are no reported judicial decisions considering whether a public school's unilateral disenrollment of special education students is a change in placement, there is a substantial body of case law analyzing whether the modification or termination of an educational program constitutes a ‘fundamental change’ or ‘elimination.’ Those cases distinguish between inconsequential modifications in a student's program and those which ‘significantly affect the child's learning experience.’”
 - “[T]his Court now holds that Mastery’s unilateral disenrollment of R.B was a change in Placement”




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Key Quote

“ ”

- The court:
 - “Although the question of whether a disenrollment constitutes a change in placement is a matter of first impression, principles drawn from the body of law governing disciplinary-based exclusions and graduations provide a useful analytical framework. In both graduation and disciplinary exclusion cases, any change in a special education child's placement must comply with the procedural safeguards regardless of what outcome state or local laws might dictate for a special education student's non-disabled peers.”




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Key Quotes

“ ”

- ❑ The court:
 - ❑ “Like a graduation, indefinite suspension, or expulsion, the unilateral disenrollment of a special education student, which results in the absolute termination of a child's special education program, and purportedly the termination of a LEA's responsibility to deliver FAPE, is a change in placement.”
 - ❑ “Although R.B.'s disenrollment was not necessarily a disciplinary action, it was precipitated by R.B.'s chronic absenteeism.”




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Key Quotes

“ ”

- ❑ The court:
 - ❑ “Mastery is correct in asserting that state law provides that a student must be disenrolled after ten consecutive absences. But that law does not exist in a vacuum; because R.B. is a student eligible for special education, [the] Pennsylvania Education Code and the IDEA are also applicable. And to the extent that IDEA might conflict with that state law, it prevails under the Supremacy Clause of the Constitution.”



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Case Take Aways

- ❑ IDEA guarantees Free Appropriate Public Education (FAPE).
- ❑ FAPE must be available to all eligible students with disabilities.
- ❑ Schools must ensure access to services and supports.
- ❑ Attendance issues do not remove IDEA obligations automatically.
- ❑ Dropping a student may result in denial of FAPE.



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Legal Standard

- ❑ “In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.”

34 C.F.R. § 300.324(a)(2)(i).



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Legal Standard

- ❑ (a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—
 - ❑ (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation;

34 C.F.R. § 300.303.



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Legal Standard

- ❑ “Special education and related services are based on the identified needs of the child and not on the disability category in which the child is classified.”

Commentary to 34 C.F.R. § 300.8 (child with a disability) at 71 Fed. Reg. 46,547 (2006).



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Legal Standard

- ❑ Under 34 C.F.R. § 300.320, FBA’s and BIP’s are not required components of the IEP. (See also 71 Fed. Reg. 46,629 (2006)).
- ❑ Triggers that may suggest the need for an FBA and BIP are behaviors that “interfere[] with the important teaching and learning activities of school.” 64 Fed. Reg. 12,405 and 64 Fed. Reg. 12,586 (1999).
 - ❑ Truancy is also a factor that may trigger the need for a BIP or additional supports and services through the IEP.
- ❑ Once a student is eligible under the IDEA, any significant attendance or truancy problem, regardless of cause, should be addressed in some manner by the IEP team.



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PRACTICAL STRATEGIES






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School Absenteeism: Discussion in IEP Meetings

- What patterns or triggers do we see in the student's absences?
- Are there academic, social, or emotional factors contributing to nonattendance?
- Does the student need additional supports or accommodations to improve attendance?
- How can we collaborate with the family to address attendance challenges?
- Should we consider FBA (functional behavioral assessment) or other interventions?



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School Absenteeism: Discussion in IEP Meetings

- ❑ Once the FBA identifies patterns and triggers for the absences, a Behavior Intervention Plan (BIP) is created to provide targeted strategies.
- ❑ A well-designed BIP for absenteeism might include:
 - ❑ **Positive Reinforcement:** Incentives or privileges for improved attendance.
 - ❑ **Check-Ins & Mentoring:** Daily support from a staff mentor.
 - ❑ **Schedule or Environment Changes:** Adjustments to reduce stressors.
 - ❑ **Coping Skills Training:** Counseling or SEL activities for anxiety.
 - ❑ **Family & Community Engagement:** Collaboration with parents and resources.



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School Absenteeism: Discussion in IEP Meetings

- ❑ Incorporate interventions to encourage attendance
 - ❑ Counseling
 - ❑ FBA/BIP
 - ❑ Alternative Scheduling
 - ❑ Home visits
 - ❑ Increased academic support
- ❑ Monitor effectiveness and try again!
- ❑ If you deny a request for a home-based programming due to attendance issues, be sure to clearly document your reasons for doing so in the PWN.



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Platte County School District #1, 123 LRP 29749 (WY SEA 2023).

- ❑ An 8th-grade student with an Emotional Disturbance had excessive absences due to anxiety.
- ❑ The Complaint investigator found that the District developed and implemented an appropriate program for the student.



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Platte County School District #1, 123 LRP 29749 (WY SEA 2023).

- ❑ The IEP team:
 - ❑ reconvened multiple times,
 - ❑ Added goals in coping and advocacy skills
 - ❑ provided support during virtual services when the student missed school,
 - ❑ added an after-school robotics program,
 - ❑ developed an attendance plan with incentives,
 - ❑ adopted outside evaluation recommendations to reduce attendance anxiety,
 - ❑ made multiple attempts to get him back in school, and
 - ❑ remained responsive to his ongoing attendance and anxiety needs.



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Key Quotes

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- ❑ “If a student is consistently absent and his/her truancy is affecting his/her ability to receive the services in his/her IEP, the district should take steps to address the issue. Failing to do so may amount to an IEP implementation failure. (citing *Joaquin v. Friendship Pub. Charter Sch.*, 66 IDELR 64 (D.D.C. 2015)).”
- ❑ “The record indicated that the Complainant was notified by School staff when the Student was approaching the 10-day threshold and specifically that the Student would be unenrolled after 10 days. One specific occasion occurred during the November IEP meeting when the **District staff explained the removal from enrollment for purposes of membership did not mean a discontinuation of the services. The unenrollment from attendance was a fiscal function.** There is no indication that the services offered to the Student changed during the period of time s/he was unenrolled from the membership count.”



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Practical Strategies

- ❑ When a student misses school, you should consider following this process:
 - ❑ **Review records:** Look at the student's evaluation, IEP and disciplinary records to see if there's a pattern of truancy.
 - ❑ **Consult with parents:** Contact the parents to see if anything has happened that could explain the student's lack of progress or sudden increase of truanancies or tardiness.
 - ❑ **Hold an IEP meeting:** Don't delay in holding an IEP meeting to discuss the information you have gathered with the student's teachers, specialists and parents. You may need to tweak the interventions, or even conduct a re-evaluation to gather additional information.
 - ❑ **Interview the student:** Depending on the student's age, you may want to interview him/her as part of your investigation. Many times, when a student is truant, he/she is trying to tell us something.



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Practical Strategies

- ❑ Focus your attention on the considerable efforts the school can make to address the truancy problem and spend little time laying blame on the parent.
- ❑ Train your staff to investigate reasons for the student's absences and determine if they may have a disability-based origin that may rise to the need of a special education referral.
- ❑ Working with parents on truancy issues may involve soliciting their support, providing parent counseling and training parents on behavioral interventions.
- ❑ Assist parents in linking with social work services, mental health services, and juvenile assistance resources in the community.
- ❑ Have open communication with probation and/or truancy officers assigned to the student.



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School Absenteeism: Interventions and Supports

- ❑ **Check-In/Check-Out:** How It Works: **Morning Check-In:** "What's your goal for today?" or "How do you feel about coming to school?" **End-of-Day Check-Out:** Review attendance, discuss struggles, and set goals for the next day.
- ❑ **Attendance Contracts with Goal Setting:** How It Works: A formal agreement between the student, parents, and school outlining attendance goals and incentives. **Create a visual attendance tracker** (a calendar with stickers for each day present). **Student sets weekly attendance goals** (e.g., "I will come to school 4 out of 5 days this week"). **Reflection Journal:** Student writes about why they missed school and how to improve.



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School Absenteeism: Interventions and Supports

- ❑ **"Attendance Buddies" or Mentorship: How It Works:** Pair the student with a reliable peer, older mentor, or trusted staff to encourage attendance and provide accountability. **Morning Text/Call Reminders:** Peer buddy reminds the student to come to school. **Check-Ins During Lunch:** Weekly lunch meeting to discuss attendance progress. **Shared Goal Chart:** The buddy and student create a simple visual progress chart.
- ❑ **Small Group Counseling for Attendance Issues: How It Works:** Targeted group sessions for students struggling with attendance due to anxiety, motivation, or home-life issues. **"What's Holding You Back?" Activity:** Students write down and discuss barriers to attending school. **Role-Playing:** Practice responding to stressors that lead to absenteeism (e.g., test anxiety, social fears). **Motivational Interviewing Techniques:** "What would make school more enjoyable for you?"



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School Absenteeism: Interventions and Supports

- ❑ **Home-School Connection Program: How It Works:** Strengthen school-family communication to address absenteeism at home. **Daily Check-Ins with Parents:** Counselor or teacher calls/texts parents when the student is absent. **"Morning Readiness Routine" Workshop:** Teach parents strategies for getting their child to school. **Positive Postcards Home:** Send home praise when attendance improves.
- ❑ **Attendance Incentives & Recognition: How It Works:** Reward students for improving their attendance in meaningful ways. **"Beat Your Own Best" Challenge:** Students try to exceed their previous month's attendance. **Raffle for Consistent Attendance:** Each full week of attendance earns a ticket for a monthly prize drawing. **"Breakfast Club" for On-Time Students:** Students who arrive on time for two weeks get a special breakfast.



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School Absenteeism: Interventions and Supports

- ❑ **Social-Emotional Learning (SEL) Lessons on Motivation: How It Works:** Teach self-regulation and goal-setting skills to improve student engagement. **"Vision Board" Activity:** Create a collage of goals that require good attendance. **"My Future Self" Letter:** Students write a letter to their future selves about the benefits of staying in school. **Group Discussion:** "How does missing school affect your dreams and goals?"
- ❑ **Schoolwide Campaigns & Public Recognition: How It Works:** Normalize good attendance through positive reinforcement. **"Attendance Matters" Wall:** Post names of students with perfect/improved attendance. **Teacher Encouragement Notes:** Staff members write personal notes to students with attendance struggles. **School-wide "Spirit Days" Tied to Attendance:** Example—Wear a fun hat if you had perfect attendance this week.



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School Absenteeism: Take Aways

- ❑ **Early Intervention is Key:** Addressing attendance issues early can prevent long-term academic struggles and improve student outcomes.
- ❑ **Collaboration Matters:** Schools, families, and community partners need to work together to support students facing barriers to attendance.
- ❑ **Flexible Solutions:** One-size-fits-all solutions rarely work; personalized strategies tailored to each student's needs are more effective.
- ❑ **Focus on Root Causes:** Understanding the underlying reasons for absenteeism (e.g., health, family issues, social-emotional challenges) is crucial for creating lasting solutions.
- ❑ **Legal Considerations:** Facilitated IEP meetings, mediation, truancy proceedings may be appropriate when collaborative methods have failed.



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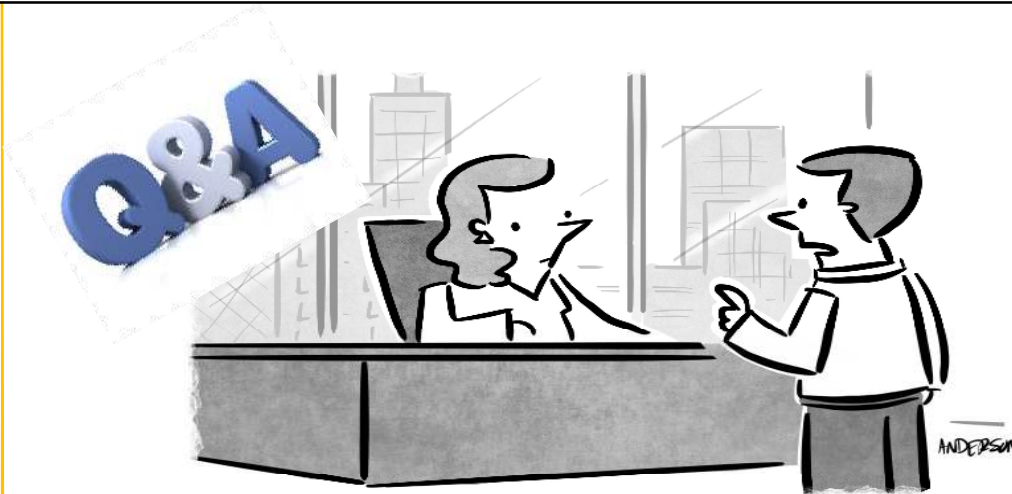
School Absenteeism: Take Aways

- ❑ If considering initiating legal proceedings under local compulsory attendance laws, *investigate the reasons for the attendance problems and consider whether the truancy may be related to a disability.*
- ❑ *When there is debate . . . Evaluate! or Re-evaluate!* A student who has an IEP and does not show up to school or fails to stay in class is a red flag.
- ❑ *Explore reason for student's tardies, absences ASAP.* If you notice a student with an IEP is accumulating tardies and absences, quickly develop a plan to improve attendance. This may include routines to follow in the morning before school. It can also describe how a parent will call the school and access resources.
- ❑ You're not required to reconvene an IEP team meeting or reevaluate a student simply because he/she has been truant for a certain number of days. However, depending on the content of the student's IEP and other circumstances, *frequent absenteeism may trigger a district's duty to respond.*



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"The reason I ask is that I need an answer
to my question."




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