



F3 Law

In-Home Placement and Services for Students with Disabilities



What We'll Cover . . .

- Home or Hospital Instruction
 - Home or Hospital Instruction for General Education Students
 - Home or Hospital Instruction for Students with Disabilities
 - Home or Hospital Instruction and the Least Restrictive Environment (“LRE”)
 - Case Examples and Practical Compliance Keys
- Other Types of In-Home Education for Students with Disabilities
 - Independent Study
 - Home Schooling
- Residential Placements



Home or Hospital Instruction

Home or Hospital Instruction (“HHI”)

California law distinguishes between individual academic instruction provided to a general education student who is at home or in hospital due to a temporary disability, and special education and related services in the home or hospital to provide FAPE to a special education student with an IEP

HHI for General Education Students

- “Temporary disability” makes school attendance impossible or inadvisable
- “Temporary disability” is physical, mental, or emotional disability incurred while student is enrolled in regular day classes or alternative education program, and after which student can reasonably be expected to return to regular day classes or alternative education program
- Individual instruction in student’s home must begin no later than five working days after district has determined that student is to receive such instruction
- Five hours per week for ADA purposes
- Instruction must be provided by teachers with valid California teaching credentials

(Ed. Code, § 48206.3; Ed. Code, § 48207.5; Ed. Code, § 44865)

HHI for General Education Students

- Absences from student's regular school program are excused until student is able to return to regular school program
- Student receiving individual instruction who is well enough to return to school must be allowed to return to school that student attended immediately before receiving individual instruction, if student returns during school year in which individual instruction was initiated
- Education Code does not address content of instruction that district must provide
- CDE: Goal should be maintenance of student's former level of performance during recovery so as not to jeopardize student's future performance

(Ed. Code, § 48207.3; Ed. Code, § 48240; California Department of Education, Home & Hospital Instruction Program Summary (last reviewed, Feb. 5, 2025))

HHI for Students with Disabilities

Eligibility

- IEP team may recommend that student receive special education and related services in home or hospital if it believes such placement is necessary and it is least restrictive environment in which student can receive instruction or services.
- No minimum amount of time that student must be out of school before starting HHI
- Placing special education student on HHI is considered change in placement

(Ed. Code, § 48206.3; Ed. Code, § 56361; Cal. Code Regs., tit.5, § 3051.4(a))

HHI for Students with Disabilities

Requirement for Medical Report

- IEP team must have medical report from student's physician, surgeon, or treating psychologist, as appropriate, stating student's diagnosed condition and certifying that such condition prevents student from attending less restrictive placement
- Report also must include projected calendar date for student's return to school
- IEP team must meet to reconsider IEP prior to projected calendar date for student's return to school
- Doctor's report is prerequisite for HHI placement

(Cal. Code Regs., tit.5, § 3051.4(a))

HHI for Students with Disabilities

Review of Other Available Information

- HHI is not automatic on receipt of doctor's note
- IEP team must review all available information before recommending that student receive special education and related services in HHI setting
- Rule applies even if student's condition requiring HHI is temporary or short-term
 - “For those individuals with exceptional needs with a medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness, the [IEP] team shall review, and revise, if appropriate, the [IEP] whenever there is a significant change in the [student's] current medical condition.”

(Cal. Code Regs., tit.5, § 3051.4(a),(c))

HHI for Students with Disabilities

Nature and Delivery of Services

- Provision of services in home or hospital for students with disabilities is determined in same manner as any other special education services decision
- That is, placement (and any services provided in that placement) must be individualized for specific student
- Although district is only required to provide general education students with five hours per week of home instruction, number of hours of instruction for special education students must be based on student's unique needs as determined by IEP team

(Student v. Redlands Unified School Dist. and Redlands Unified School Dist. v. Student (OAH 2008) Case Nos. N2006100159 and N2007031009, 49 IDELR 294)

HHI for Students with Disabilities

Nature and Delivery of Services

- May be provided by general education teacher, special education teacher or resource specialist teacher, if teacher or specialist is competent to provide such instruction and services, and if provision of such instruction and services by teacher or specialist is feasible; if not, appropriate related services specialist must provide such instruction
- Instruction may be delivered individually, in small groups, or by “teleclass”
- IEP team must meet to reconsider IEP prior to projected calendar date for student’s return to school in order to develop appropriate IEP for student going forward

(Cal. Code Regs., tit.5, § 3051.4(b),(d), (e))

HHI for Students with Disabilities

Nature and Delivery of Services: Consultation Requirement

- Teacher providing HHI must consult with previous school/teacher to determine:
 - Course work to be covered
 - Books and materials to be used
 - Who is responsible for issuing grades and promoting student when appropriate
- Additionally, for students in grades 7 to 12, teacher must confer with school guidance counselor to determine:
 - Hours that student has earned toward semester course credit in each subject included in IEP and student's grade as of last day of attendance
 - Who is responsible for issuing credits when course work is completed
 - Who will issue diploma if student is to graduate

(Cal. Code Regs., tit.5, § 3051.4(f))

HHI for Students with Disabilities

Services for Students with Chronic Illnesses or Acute Health Problems

- Under separate section of California regulations, when student with disability eligible under former section 3030(f) (now redesignated as § 3030(b)(9)—“other health impairment”) experiences acute health problem that results in non-attendance for more than five consecutive days, district must inform parents of the availability of individual instruction “to be delivered in student’s home, in hospital, through individual consultation, or by other instructional methods using advanced communication technology”
- District also must convene IEP team meeting to determine appropriate educational services
- If there is pattern of sporadic illness, IEP team must convene to consider alternative means for student to demonstrate competencies in required course of study so that cumulative number of absences do not prevent educational progress

(Cal. Code Regs., tit.5, § 3051.17))

HHI and LRE: Overview and Continuum

- To maximum extent appropriate, students with disabilities should be educated with nondisabled students
- Special classes, separate schooling, or other removal from general educational environment occurs only if nature or severity of disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily
- Districts must ensure that continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services
- HHI is one of the most restrictive placements on continuum
- Before placing student on HHI, IEP team must be assured that student has medical or psychological condition that prevents student from receiving special education and related services in lesser restrictive environment

(34 C.F.R. §§ 300.114, 300.115; Ed. Code, §§ 56040.1, 56360; Anaheim Elementary School Dist. v. Student (OAH 2017) Case No. 2017010041, 117 LRP 22352)

HHI Case Example #1

Roseville Joint Union High School Dist. (OAH 2024)

Facts:

- Parent provided District with request for HHI on March 14, 2024, indicating that Student with OHI would have orthopedic surgery on April 1, 2024, and would be homebound until May 12, 2024
- At March 21, 2024 IEP team meeting, District initially denied request for HHI, incorrectly believing that they could not alter Student's stay-put placement by moving Student to HHI
- District's special services director investigated matter and attempted to offer HHI on approximately April 5, 2024
- Parent did not respond to repeated calls and subsequent emails offering temporary change in placement to HHI
- District proposed IEP amendment and attempted to convene IEP team meeting on May 3, 2024, but Parent did not consent or respond to meeting notice

HHI Case Example #1

Roseville Joint Union High School Dist. (OAH 2024)

Decision:

- ALJ found procedural violation of IDEA by District's failure to offer Student HHI at March 2024 IEP team meeting
- Procedural error did not result in denial of FAPE because:
 - District timely moved to correct error within timeframe that District reasonably had to implement HHI
 - As result of spring break, Student would have only missed one day of instruction by April 5, 2024
 - Parent's refusal to attend IEP team meeting in May 2024 and refusal to communicate with District staff were impediments to Student receiving HHI

(Student v. Roseville Joint Union High School Dist. (OAH 2024) Case No. 2024050221, 124 LRP 35512)

HHI Case Example #2

Central Unified School Dist. (OAH 2023)

Facts:

- Accident when Student was 3-years-old left her severely and permanently disabled, including traumatic brain injury, orthopedic impairments and visual impairments
- Student was placed on HHI for 2020-2021 and 2021-2022 school years, receiving one hour per day of instruction
- Parent requested continuation of HHI for Student's 11th-grade year (2022-2023 school year), citing continued risk of complications if Student contracted COVID
- District's special education director was concerned about length of time Student had spent on HHI and about limited amount of instruction Student was receiving
- District proposed placement called for Student's return to campus

HHI Case Example #2

Central Unified School Dist. (OAH 2023)

Decision:

- ALJ agreed that another year of HHI would not be LRE for Student, who enjoyed socialization with others
- “[HHI] is generally a temporary placement and is not appropriate for a student whose needs can be met in a less restrictive environment”
- “Student was entitled to an educational program that addressed her educational needs while also giving her access to general education peers and friends”
- District high school’s functional life skills SDC was appropriate setting to implement Student’s goals, allowed her to participate in general education classes, and enabled participation in extracurricular activities
- One hour per day of HHI was not sufficient to provide Student with FAPE

(Central Unified School District v. Student (OAH 2023) Case No. 2023030998, 123 LRP 19871)

HHI Case Example #3

Buena Park School Dist. (OAH 2017)

Facts:

- Parent removed Student with Down syndrome from District's SDC
- Parent told physician that she did not like District's placement; physician provided note recommending three-month home schooling
- District placed Student on HHI from April to June 2014, with 1 hour per day of instruction
- No IEP team involvement and IEP was not amended to reflect placement change
- For 2014-2015, Parent again provided physician's notes and District continued HHI under same terms (1 hour per day of instruction with no other services)
- Same arrangement for 2015-2016
- IEP team was not notified that Student might need HHI as IEP placement

HHI Case Example #3

Buena Park School Dist. (OAH 2017)

Decision:

- ALJ found denial of FAPE
 - District knowingly and unilaterally decided, without Parental participation or consent, to deny provision of services from March 2014 to September 2016 based on belief that Student was not attending school as result of temporary medical disability
 - Decision was based on erroneous interpretation of HHI law
 - District failed to hold IEP team meetings to consider need for HHI, thereby denying Parent's meaningful participation in IEP process

HHI Case Example #3

Buena Park School Dist. (OAH 2017)

Decision (cont'd):

- If District had convened IEP team meeting, other outcomes were possible:
 - Team might have changed placement from SDC to HHI and made arrangements to provide services in home or elsewhere if Student could travel;
or
 - Team might have concluded HHI was not LRE for Student, and could have: (1) reached agreement to return Student to school; or (2) filed for due process to implement SDC placement over Parent's objections

(Student v. Buena Park School Dist. (OAH 2017) Case No. 2016090918, 117 LRP 16952)

HHI Case Example #4

Tehachapi Unified School Dist. (OAH 2016)

Facts:

- Student, who had spina bifida, hydrocephalus and bilateral club foot, enrolled in District's pre-kindergarten
- Foot surgery kept Student out of school for eight weeks in October 2013
- Student underwent another surgery on his feet in October 2014 and was unable to return to school for 12 weeks
- During this latter period, misunderstanding arose as to whether Parent was withdrawing Student from school
- District did not offer HHI during either of Student's recovery periods
- School psychologist recalled making verbal offer of HHI at IEP meeting, but it was not documented

HHI Case Example #4

Tehachapi Unified School Dist. (OAH 2016)

Decision:

- ALJ determined that Student was entitled to HHI during his periods of isolation and post-surgical recovery
- Rejected District's argument that Parent did not present physician's note
 - District never told Parent that note was needed
- No evidence to support verbal offer of HHI
- ALJ also rejected argument that Parent disenrolled Student in Fall of 2014, as Parent had made it clear that she intended to return Student to school following his surgery
- ALJ awarded 105 hours of compensatory education, based upon five hours per week for 21 weeks

(Student v. Tehachapi Unified School Dist. (OAH 2016) Case No. 2015060035, 67 IDELR 102)

HHI: Practical Compliance Keys

- Understand when IEP team has obligation to consider whether HHI is appropriate or necessary for student
- Know relevant regulations and keep close track of extended absences, medical issues and hospitalizations
- Remember that, for special education students, there is no minimum amount of time student must be out of school before starting HHI
- Make sure IEP team members are sufficiently trained to field questions from parents and be sure to document all offers made to assist parents in gathering requisite information to submit request for HHI

HHI: Practical Compliance Keys

- Establishing direct communication between IEP team and student's physician can help team better understand student's medical diagnosis and doctor's recommendations
- Avoid miscommunication by establishing process with school nurses and/or health services coordinators to ensure IEP team receives copies of information provided by physician
- Remember that HHI for special education students must be individually tailored to each student's needs; IEP team must ensure that all of student's educational needs continue to be addressed while student is receiving HHI

HHI: Practical Compliance Keys

- Because HHI is one of most restrictive environments on continuum in which student can be placed, IEP team should approach this decision with caution
- For example, team should consider whether student could continue in a school setting with addition of classroom accommodations, modifications, and/or IEP services, or be placed in NPS
- Team could also consider whether student can receive some services at school, and some in home setting



Other Types of In-Home Instruction

Educating Students at Home

In California, there are several ways parents may educate their children at home, including

- Public charter school
- Existing private school that offers online learning or independent study
- Public school independent study program
- Establishing home-based private school (home schooling)
- Credentialed tutor

Independent Study

Independent study is an individualized alternative education to teach the core curriculum, in which students generally can work independently at home with supervision and oversight from a certificated teacher

(Ed. Code, §§ 51745; 51747; 51747.5; Jonathan L. v. Superior Court (Cal. Ct. App. 2008) 165 Cal. App. 4th 1074)

District Policies for Independent Study

- Districts must adopt and implement written policies that include:
 - Maximum length of time in which student must complete assigned work
 - Level of satisfactory educational progress and number of missed assignments that will be allowed before evaluation is conducted to determine whether it is in best interests of student to remain in independent study
 - Provision of content aligned to grade level standards that is substantially equivalent to in-person instruction
 - Procedures for tiered reengagement strategies for all students who are not meeting specified attendance requirements, who are not participating in specified synchronous instruction, or who are in violation of required written agreement

(Ed. Code, § 51747, subds. (a)-(d))

District Policies for Independent Study

- Districts policies also must include:
 - For students in TK and grades 1 to 3, inclusive, a plan to provide opportunities for daily synchronous instruction for all students throughout school year
 - For students in grades 4 to 8, inclusive, a plan to provide opportunities for both daily live interaction and at least weekly synchronous instruction for all students throughout school year
 - For students in grades 9 to 12, inclusive, a plan to provide opportunities for at least weekly synchronous instruction for all students throughout school year
 - A plan to transition students whose families wish to return to in-person instruction from independent study “expeditiously, and, in no case, later than five instructional days”

(Ed. Code, § 51747, subds. (e)-(f))

District Policies for Independent Study

- Districts must adopt written agreement for students participating in independent study that encompasses:
 - Manner, time, frequency, and place for submitting assignments and reporting progress
 - Objectives and methods of study for student's work, and methods used to evaluate work
 - Specific resources, including materials and personnel, that will be made available to student
 - Statement of the policies regarding maximum length to complete assigned work, level of satisfactory educational progress, and number of missed assignments allowed before an evaluation of whether student should be allowed to continue in independent study
 - Duration of independent study agreement, which may not be longer than one school year

(Ed. Code, § 51747, subd. (g))

District Policies for Independent Study

- Districts must adopt written agreement for students participating in independent study that encompasses:
 - Statement of number of course credits or other measures of academic accomplishment appropriate to agreement, to be earned by student upon completion
 - Statement detailing academic and other supports that will be provided to address needs of students who are not performing at grade level, or need support in other areas, such as English learners or students with disabilities in order to be consistent with student's IEP or Section 504 plan
 - Inclusion of statement in each independent study agreement that independent study is optional educational alternative in which no student may be required to participate

(Ed. Code, § 51747, subd. (g))

Independent Study for Students with Disabilities

- Special education student with IEP may participate in independent study program if student's IEP team specifically includes such program as component of student's IEP for provision of FAPE
- If parents assert that student's health would be put at risk by in-person instruction, they may request independent study and student's IEP team must convene to make individualized determination as to whether student can receive FAPE in independent study placement
- Student's inability to work independently, need for adult support, or need for special education or related services shall not preclude IEP team from determining that student can receive FAPE in independent study placement
- For a special education student, changing to independent study is change in placement

(Ed. Code, § 51745, subd. (c))

Independent Study Case Example #1

Community Roots Academy Charter School (OAH 2021)

Facts:

- Charter School's IEP for sixth-grade Student with ED, autism and OHI decreased Student's school day by half, providing for independent study during afternoon due to purported behavioral concern preventing Student's access to campus
- IEP team did not provide Parents with independent study contract, nor did team discuss supports and accommodations for independent study classes
- Charter School contracted with online school to provide independent study science class, but did not provide required information regarding Student's IEP
- Parents asserted that Charter School denied Student FAPE by reducing his school day and requiring that he take independent studies classes

Independent Study Case Example #1

Community Roots Academy Charter School (OAH 2021)

Decision:

- Charter School committed procedural and substantive violations in shortening Student's school day and in arranging and implementing independent study program
 - Charter School did not provide Parents with contract for independent study as required by law
 - IEP did not meet any of SELPA's guidelines and requirements for independent study; Charter School staff testified that they were not aware of such requirements
 - Student was unable to access or benefit from independent study science course, which began five weeks after school year started
 - Online school was not provided with copy of Student's IEP and, as a result, did not provide special education supports and accommodations Student needed to access course
 - "Failure to implement Student's IEP during independent study was a material breach of his IEP, thereby denying student a FAPE"

(Community Roots Academy Charter School v. Student (OAH 2021) Case No. 2020100158, 121 LRP 18298)

Independent Study Case Example #2

River Springs Charter School (OAH 2019)

Facts:

- 12-year-old Student with autism and OHI was initially placed in a mild-to-moderate special day class
- For 2017-2018 school year, Parent and Charter School decided to place Student in independent study program with on-campus SL therapy and counseling
- Student's behavior improved and he made academic progress, but Parent began having difficulty making Student available for SL and counseling services
- Nonetheless, at June 2018 IEP team meeting, Charter School proposed continuing independent study placement for upcoming school year
- Parent did not wish Student to continue in program and Charter School sought to implement its proposed IEP absent her consent

Independent Study Case Example #2

River Springs Charter School (OAH 2019)

Decision:

- ALJ rejected Charter School's proposal to continue independent study placement for following school year
 - Charter School failed to prove how continuing same services and placement could confer Student with educational benefit that not only addressed his academic needs, but also his social/emotional needs that affected his academic progress, school behavior and socialization
 - Staying at home prevented Student from gaining skills and confidence interacting with peers as he was not forced to speak to anyone he did not know or like, and had little to no academic demands placed on him during most of the day
 - Student refused to engage in specialized academic instruction, SL services, and counseling without Mother present
 - Charter School had duty to consider other options along continuum, including SDC and NPS

(River Springs Charter School v. Student (OAH 2019) Case No. 2018120978, 119 LRP 22145)

Independent Study: Practical Compliance Keys

- Determine the reason for the request for independent study: Is student medically fragile? Are there any lingering COVID concerns? Other issues?
- Make certain parent understands what independent study entails and define level of teacher contact and services to which student would be entitled
- Emphasize LRE requirement and how it applies to student; ensure parents understand restrictiveness of independent study along LRE continuum
- Although parent may request independent study, IEP team is charged with ensuring that student's IEP offers FAPE, which may or may not include independent study depending on student's needs

Home Schooling

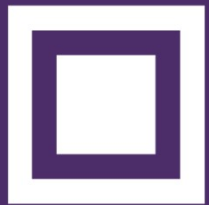
- In order for student to be exempt from compulsory education law based on private school enrollment, student must be instructed: (1) in private full-time day school by persons capable of teaching; or (2) for at least three hours per day for 175 days per year by private tutor with valid state credential
- Private school is required to file private school affidavit each year with Superintendent of Public Instruction each year
- Some parents file private school affidavit to operate private school in their home and assert exemption for their children from compulsory education law, which, to be valid, requires verification by district's attendance supervisor that private school has complied with Education Code section 33190 (private school affidavit requirements)

(Ed. Code, §§ 33190, 48222, 48224)

Home Schooling

- Students with disabilities who are home schooled in conjunction with state law requirements are considered parentally placed private school students under IDEA
- Such students have no individual right to receive some or all of the special education and related services that they would receive if enrolled in public school

(34 C.F.R. §§ 300.132-300.137)



Residential Placement

Residential Placement

While, of course, not in the student's traditional home setting, education in a residential program is an alternative placement apart from the student's school and, as such, merits some discussion

Residential Placement

- Continuum of alternative placements also may include “placement in a public or private residential program,” in event such a program “is necessary to provide special education and related services to a child with a disability”
- If placement in public or private residential program is necessary to provide special education and related services to student, then such placement, including non-medical care and room and board, must be at no cost to parents
- Districts are not responsible for providing medical care associated with residential placements (i.e., visits to doctor for treatment of medical conditions are not IDEA-covered services)

(34 C.F.R. § 300.104; 34 C.F.R. § 300.115; Ed. Code, § 56031; 71 Fed. Reg. 46581 (Aug. 14, 2006))

Residential Placement

- Given highly restrictive nature of residential placement on continuum, removal of student to residential setting complies with LRE mandate in very limited situations for students who are unable to receive FAPE in lesser restrictive environment
- Generally, further residential placement is located from student's home and community, the more restrictive it is

(Carlisle Area School Dist. v. Scott P. (3rd Cir. 1995) 62 F.3d 520, 23 IDELR 293; Todd D. v. Andrews (11th Cir. 1991) 933 F.2d 1576, 17 IDELR 986)

Residential Placement

- Several cases from 9th Circuit have delineated when district has duty to provide/fund residential placement to address student's unique needs and provide FAPE
- Although each decision approached issue slightly differently, essentially court's analysis for determining whether residential placement is appropriate hinged on whether placement was necessary for educational purposes

(Clovis Unified School Dist. v. California Office of Administrative Hearings (9th Cir. 1990) 903 F.2d 635; Seattle School Dist. No. 1 v. B.S. (9th Cir. 1996) 82 F.3d 1493; County of San Diego v. California Special Education Hearing Office (9th Cir. 1996) 93 F.3d 1458; Ashland School District v. E.H. (9th Cir. 2009) 587 F.3d 1175; Ashland School District v. R.J. (9th Cir. 2009) 588 F.3d 1004)

Residential Placement

Clovis USD v. California OAH (1990)

- Three possible tests for determining when district is responsible for cost of residential placement
 - When placement is “supportive” of student’s education
 - When medical, social or emotional problems are intertwined with educational problems
 - When placement primarily aids student to benefit from special education

Residential Placement Case Example

Simi Valley Unified School Dist. (OAH 2023)

Facts:

- Middle-school Student with ED engaged in engaged in risky, unhealthy and occasionally criminal behavior
- IEP team placed Student in RTC in Provo, Utah, later changing his placement to less restrictive RTC (New Haven) in Vista, Calif.
- Student continued to display impulsive behaviors, but made progress
- During Student's ninth-grade year (2022-2023), District proposed changing placement from RTC to Phoenix School day program
- Parent believed Student continued to require RTC placement
- District filed for due process to implement IEP

Residential Placement Case Example

Simi Valley Unified School Dist. (OAH 2023)

Decision:

- ALJ determined that District's proposed IEP were procedurally and substantively appropriate
 - “Student had received maximum benefit from the residential setting. Further placement in a residential setting carried risks that Student would regress and become institutionalized.”
 - Phoenix School, which was designed for students with intensive social emotional and behavioral needs, was designed to replicate day program of an RTC
 - ALJ took into account that Student badly wanted to return home and was excited that Phoenix School had male and female students

(Simi Valley Unified School Dist. v. Student (OAH 2023) Case No. 2023010221, 123 LRP 11827)

Residential Placement: Practical Compliance Keys

- Find out from parents their primary reason(s) for requesting residential placement
- Stress importance of LRE and inform parents that residential placement is one of most restrictive environments possible
- Be prepared to discuss all placement possibilities along continuum, especially when parents want their child to go directly from general education classroom to residential setting
- If IEP team determines that residential placement is necessary for provision of FAPE, look for appropriate placement as close to student's home as possible
- Remember to base all placement decisions on student's needs, not parents' desires

Final Thoughts . . .

- In-home placement and services, as well as residential placement, can pose challenges for IEP teams and other school staff, particularly in areas involving communications with parents and physicians, procedural compliance, LRE and IEP implementation
- In addition, team members should understand that IEP team meeting at which in-home placement or residential placement is discussed can be emotional experience for parents, particularly if student has a serious illness or poses significant behavioral issues that prevent student from attending school
- To address these challenges successfully, it is essential to be cognizant of issues over which disputes typically arise, understand what law requires and, most importantly, strive to build trusting partnerships with parents

Information in this presentation, including but not limited to PowerPoint materials and the presenters' comments, is summary only and not legal advice. We advise you to consult with legal counsel to determine how this information may apply to your specific facts and circumstances.



F3 Law

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F3 Law

Executive Functioning: A Legal Overview



What We'll Cover . . .

- What Is “Executive Functioning”?
- Child Find, Assessments
- Eligibility
- IEP Goals
- IEP Development and the Provision of FAPE



What Is “Executive Functioning”?

Executive Functioning Defined

Executive functioning encompasses mental processes that enable students to plan, focus attention, remember instructions, and handle multiple tasks successfully

Executive Functioning Defined

- Processes can include:
 - Self-awareness
 - Inhibition
 - Nonverbal working memory (short-term memory related to sensory and spatial information)
 - Verbal working memory (short-term memory related to speech and language)
 - Emotional regulation
 - Motivational regulation
 - Planning and problem-solving

Executive Functioning Defined

- Students with poor executive functioning skills can have difficulty regulating their behaviors
- Difficulties can include monitoring and changing behavior as needed, planning future behavior when faced with new tasks and situations, and anticipating outcomes and adapting to changing situations
- Such students will often have problems interacting with others and fitting in socially

Executive Functioning Defined

- Executive function deficits can be found in students with mental health impairments including depression, OCD, PTSD, as well as students with ADD/ADHD, intellectual, emotional and learning disabilities, autism and brain injuries
- Because frontal lobes of brain play major role in executive functioning, students who have had frontal lobe injuries may have difficulty with higher level processing that is foundation of executive functioning



Executive Functioning: Child Find and Eligibility

Child Find Legal Overview

Affirmative, ongoing duty to identify, locate and evaluate all children with disabilities residing in the state who are in need of special education

(34 C.F.R. § 300.11)

Child Find Legal Overview

- Triggered when district has knowledge of – or reason to suspect – student has disability
 - Threshold for suspicion is “relatively low”
 - Appropriate inquiry: Whether student should be referred, not whether student will qualify
 - Disability is “suspected,” and therefore must be assessed by district, when district has notice that student has displayed symptoms of that disability
- Affirmative obligation to act
 - Not dependent on parent request for evaluation
 - Child find not excused even when parent interferes with process
 - Passive approach – deciding not to “push” or to “wait and see” – equates to active and willful refusal to take action

(Department of Educ. State of Hawaii v. Cari Rae S. (D. Hawaii 2001) 35 IDELR 90; Compton Unified School Dist. v. Addison (9th Cir. 2010) 54 IDELR 71)

Child Find Legal Overview

- Poor or declining grades, without more, do not necessarily establish that district has failed in its child find obligation or that it failed to provide educational benefit to a student
- Child find does not, of course, guarantee eligibility for special education and related services; it is merely locating and screening process that is used to identify those children who are potentially in need of special education and related services
- Once student is so identified, district must conduct initial evaluation to determine student's eligibility for special education

(Sherman v. Mamaroneck Union Free School Dist. (2d Cir. 2003) 39 IDELR 181; 34 C.F.R. § 300.301; Ed. Code, § 56302.1.)

Eligibility Legal Overview

- To be eligible under IDEA and California law, student must:
 - Meet the definition of at least one of 13 identified disabilities **and**
 - Require special education and related services as a result of such disability
- Most disability definitions also includes requirement that the disability have “adverse effect” on “educational performance”
 - Neither term is defined by law
 - Court and ALJs interpret on case-by-case basis

(34 C.F.R. § 300.8; Ed. Code, § 56026; Cal. Code Regs., tit. 5, § 3030)

Eligibility Legal Overview

Student may not be found eligible if –

- Determinant factor is:
 - Lack of appropriate instruction in reading or math; or
 - Limited English proficiency; and
- Student does not otherwise meet the eligibility criteria under 34 C.F.R. § 300.8(a)
- California Education Code adds: No eligibility if educational needs are due primarily to temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors
 - Unless student otherwise meets eligibility requirements

(34 C.F.R. § 300.306(b); Ed. Code, § 56026, subd. (e))

Eligibility Legal Overview

- If a student has one of disabilities identified at 34 § C.F.R. 300.8 (a)(1), but only needs related services and not special education, student is not student with disability under IDEA
- However, if related service that student requires is considered “special education” under state standards, student will be eligible under IDEA

(34 C.F.R. § 300.308(a))

Case Example #1

Facts

- In December 2011 of Student's senior year, Student was struck by auto and sustained traumatic brain injury ("TBI"); District was aware of accident shortly after it occurred
- District offered Section 504 plan when Student returned to school; plan provided accommodations focused on memory, attention, planning, organization, and executive functioning, based in part on IEE
- Another IEE indicated that it would be important for Student to receive therapy focusing on executive functioning
- Believing Parent did not wish for Student to receive special education in months immediately following accident, District did not assess Student until June 2012 when Parent requested an assessment plan
- Report was not completed until after Student had graduated with regular diploma

Case Example #1

Decision

- ALJ found child find violation resulting in denial of FAPE
- District knew of student's TBI from outset and was aware that injuries might impact Student's executive functioning and ability to learn
- Development of Section 504 plan was "immaterial" and did not absolve District of child find
- While District may have correctly believed that parent was not interested in special education in the months following accident, it was less clear that Parent comprehended ramifications of postponing assessment
- In any case, it is not parent's duty to "make the call" as to whether a special education assessment plan should be presented
- ALJ: "The Child Find obligation is fulfilled when the District presents Mother with a special education assessment plan, and explains what is being offered. This simply didn't occur."

(Student v. Newport-Mesa Unified School Dist. (OAH 2014) Case No. 2013060620, 114 LRP 6941)

Case Example #2

Facts

- High-school Student with ADHD received various accommodations under Section 504 plan to address weakness in executive functioning
- By 10th grade, Student exhibited elevated scores (more concerns than are typically reported) on teachers' rating scales in inattention, hyperactivity/impulsivity, and learning problems/executive functioning
- Parent withdrew Student from District and placed her at private school that used 1:1 instruction model
- Student later returned to District for one class
- District assessment concluded Student was not eligible for special education

Case Example #2

Decision

- ALJ upheld District's determination that Student was not eligible for special education and related services
- Assessments results indicated Student scored in the average range in attention and executive functioning
- SLD criteria was not met
 - No severe discrepancy between ability and achievement
- Student met OHI definition, but did not need special education to access curriculum
 - Any issues with executive functioning were adequately addressed by Section 504 plan and Student did not need SAI to make educational progress

(Student v. Capistrano Unified School Dist. (OAH 2019) Case No. 2018070818, 119 LRP 7795, aff'd, Legris v. Capistrano Unified School Dist. (C.D. Cal. 2020) 77 IDELR 289, aff'd, (9th Cir. 2021) 79 IDELR 243)

Practical Pointers: Child Find

- How districts respond when academic or behavior issues first arise can be key factor in success or failure of subsequent child find claim
 - Involve Student Study Team or other intervention personnel at first sign of problem so that interventions can be implemented, student's progress monitored and referral made if interventions are not succeeding
- In particular with executive functioning issues, be on lookout for circumstances that signal need for evaluation
 - Red flags might include: dramatically declining grades; excessive absenteeism in tandem with a recent medical diagnosis; sudden withdrawal from peers in combination with declining school performance; etc.

Practical Pointers: Eligibility

- Determining whether executive functioning deficits meet legal definition of one or more eligibility categories is only part of analysis
 - In order to be eligible for special education, student must also require special education
- When making eligibility determinations, look to whether there is nexus between student's executive functioning issues and overall educational performance
 - Remember that “educational benefit” to be provided to student requiring special education is not limited solely to addressing student's academic needs



Executive Functioning: Assessments

Assessments Legal Overview

- Assessments under IDEA and California law serve two purposes:
 - (1) Identifying students who need specialized instruction and related services because of IDEA-eligible disability; and
 - (2) Helping IEP teams identify special education and related services that student requires

Assessments Legal Overview

- Assessments must conform to procedural requirements set out in IDEA regulations, which contain detailed provisions governing:
 - Initial evaluations (34 C.F.R. § 300.301)
 - Evaluation procedures (34 C.F.R. § 300.304)
 - Determination of needed evaluation data (34 C.F.R. § 300.305)
 - Determination of eligibility (34 C.F.R. § 300.306(a) through 34 C.F.R. § 300.306(b))
 - Procedures for determining eligibility and placement (34 C.F.R. § 300.306 (c))
 - Reevaluations (34 C.F.R. § 300.303)

Assessments Legal Overview

- Districts must assess student in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities
- Assessments must be sufficiently comprehensive to identify all of student's special education and related service needs, whether or not commonly linked to disability category of student

(34 C.F.R. § 300.304(b)(3)(B); 34 C.F.R. § 300.304(c); Ed. Code, § 56320, subd. (f))

Case Example #1

Facts and Decision

- District conducted appropriate assessment of executive functioning for 13-year-old Student with ADHD, who was receiving accommodations under Section 504 plan
- District appropriately administered Woodcock-Johnson Tests of Cognitive Abilities, Behavior Assessment System for Children, and Conners Behavior Rating Scales
- Student also was observed in classroom setting, sometimes appearing to be inattentive and distracted, but generally scoring in “average” to “low-average” range for executive functioning skills
- Overall, Student demonstrated executive functioning challenges to some degree, which was consistent with what District already knew to be basis for Student's Section 504 plan of accommodations

(Student v. Palos Verdes Peninsula Unified School Dist. (OAH 2020) Case No. 2020010514, 120 LRP 30205)

Case Example #2

Facts and Decision

- ALJ determined that District's psychoeducational assessment of 14-year-old Student with ADHD was legally flawed
- District failed to assess Student's executive functioning, despite evidence that assessment in this area was necessary based on clinically significant and at-risk ratings in areas of hyperactivity, attention and conduct problems found in behavior rating scales
- Student's struggles with organization and following through with assignments were further reasons why assessment in area of executive functioning was needed
- Mistakes, which also included failure to interview Parents and failure to observe Student, led to insufficiently comprehensive assessment of impact of ADHD on Student's educational performance

(Student v. McCabe Union Elementary School Dist. and McCabe Union Elementary School Dist. v. Student (OAH 2020) Case Nos. 2019040734 and 2019050092, 120 LRP 12209)

Practical Pointers: Assessments

- Be aware of facets of thorough assessment for executive functioning issues that may point to need for special education
 - Records review (look at student's work samples and work habits)
 - Teacher interviews (what areas of executive functioning present struggles for student)
 - Standardized assessments that include executive functioning scale
 - Rating scales (by teachers and parents)
 - Direct observations (watch for on-task and off-task behaviors both in and out of classroom; structured and unstructured activities)



Executive Functioning: IEP Goals

Goals and Goal Reporting Legal Overview

- Goals provide mechanism for determining
 - Whether the anticipated outcomes for student are being met (i.e., whether student is progressing in special education program)**and**
 - Whether placement and services are appropriate to student's special learning needs

(Letter to Hayden (OSEP 1994) 22 IDELR 501)

Goals and Goal Reporting Legal Overview

Goals are intended to determine, over 12-month period, “whether the totality of services provided pursuant to the student’s IEP – including special education, related services, and supplementary aides and services – is appropriate to the student’s unique needs.”

(Letter to Butler (OSERS 1988) 213 IDELR 118)

Goals and Goal Reporting Legal Overview

- IEP team should meet periodically throughout course of school year if circumstances warrant (e.g., if student is not making expected progress toward annual goals, IEP team must revise IEP to address such lack of progress)
- IEP teams must ensure that IEP goals are “appropriately ambitious” and that all students have “the opportunity to meet challenging objectives”

(Questions and Answers on Endrew F. v. Douglas County School District RE-1 (USDOE 2017) 71 IDELR 68)

Case Example #1

Facts

- 14-year-old Student with autism and ADHD sometimes engaged in aggressive behavior and had difficulty maintaining attention
- Parents challenged three annual IEPs developed by District in March through May 2022, March 2023 and March 2024, raising numerous issues, which included lack or inadequacy of executive functioning goals
- Parents claimed 2022 IEPs lacked specific goal titled “executive functioning,” while District asserted that goals addressed Student’s executive functioning needs, even though not specifically titled as such
- Parents asserted similar claims for 2023 and 2024 IEPs

Case Example #1

Decision

- ALJ ruled in favor of District
- 2022 IEPs included goal titled “Slow Down, Think, Act,” which required Student to check his schedule to assist in time management, consider his materials, and plan next steps to determine whether he needs to ask a question
 - According to ALJ, those skills fell within category of executive functioning
- 2023 IEP contained similar “appropriately ambitious” executive functioning goals
- 2024 IEP also addressed multiple executive functioning skills through various goals under “Behavior” title
 - “Appropriate Technology Use” and “On Task Behavior” goals required Student to remain on task for duration of activity

(Student v. Newport-Mesa Unified School Dist. (OAH 2024) Case No. 2024030862, 125 LRP 793)

Case Example #2

Facts

- After identifying that 13-year-old Student with autism needed support for executive functioning, District developed annual IEP for 2020 that included goal calling for Student to restate, organize, and plan multistep directions, measured by teacher and staff data
- After Student made significant progress toward this goal, District developed three executive functioning goals for Student's 2021 IEP that called for Student to:
 - Restate, organize, and plan multistep directions, measured by teacher and staff data
 - Use tools and organization skills to transition successfully between locations 80 percent of the time
 - Use tools and organization skills to timely complete academic assignments 80 percent of the time

Case Example #2

Decision

- ALJ found IEP executive functioning goals were measurable, appropriately ambitious, contained baselines describing present level of performance and sought to improve identified area of deficit
- To meet Student's goals, IEP team offered a variety of supports, accommodations, special education, and related services
- District court affirmed ALJ's findings
 - In 2020 IEP, District found executive functioning to be area of need and therefore developed measurable goal to improve Student's ability to manage and prioritize tasks
 - In 2021 IEP, after noting Student made "huge gains" toward previous executive functioning goal, District developed additional appropriate and measurable executive functioning goals to improve Student's ability to use tools and organization skills to transition successfully between locations, and to complete assignments
 - To help Student achieve goals, IEP team increased his SAI

(Student v. Stanislaus Union School Dist. (OAH 2022) Case No. 2022040227, 122 LRP 26564, aff'd in part, C.D. v. Stanislaus Union School Dist. (E.D. Cal. 2024) 124 LRP 26621)

Practical Pointers: Goals

- Do not forget that it is student's individual needs, not eligibility classification, that drive IEP team's goal development
- Title of goal is not determinative if it addresses student needs
- Too many goals can complicate full implementation of student's IEP, as unneeded or unnecessary goals can leave district with responsibility of monitoring and following through with more than is necessary, often at expense of essential goals
- Districts are not required to develop goals for every manifestation of student's disability; rather, amount and type of goals that IEP team is required to provide depend on student's identified needs

Practical Pointers: Goals

- Lesson from Andrew F. is not to repeat goals from previous IEPs without addressing “why” – and then doing something
- Beware of writing goals that are not robust enough, especially in wake of Andrew F.
- Remember that baselines are starting point for each annual goal; they must be accurate and should relate specifically to goal
- Remember the “stranger test”: IEP goal is appropriate if person unfamiliar with IEP would be able to implement goal, implement assessment of student's progress on goal, and determine whether student's progress was satisfactory



Executive Functioning: IEP Development and the Provision of FAPE

IEP Development and Provision of FAPE

“By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to be able 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 [the child’s] circumstances**”

(Endrew F. v. Douglas County Sch. Dist. RE-1 (U.S. 2017) 69 IDELR 174)

IEP Development and Provision of FAPE

“The ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The [IDEA] contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal . . . [T]he IDEA cannot and does not promise ‘any particular [educational] outcome.’ . . . No law could do that—for any child.”

(Endrew F. v. Douglas County Sch. Dist. RE-1 (U.S. 2017) 69 IDELR 174)

Case Example #1

Facts

- After Student began exhibiting school refusal, Parent placed him at NPS
- Following settlement of reimbursement claim, District assessed Student, finding him eligible (autism and OHI) and determining that executive functioning was area of concern for Student
- District offered services at comprehensive high school to address executive functioning that included SAI and accommodations to assist with Student's executive functioning skills, including consultation services for organization and task completion
- Parent rejected offer, relying on neuropsychological IEE that opined more restrictive placement at NPS was appropriate

Case Example #1

Decision

- ALJ found District's offer of FAPE could appropriately address Student's executive functioning deficits through SAI, consultation and other accommodations focusing on organization, task completion, planning, and study skills
- No persuasive evidence was presented that Student needed additional services or accommodation to assist with his executive functioning
- District's high school was challenging academically, providing for interaction with peers, preparing Student for his future and exposing him to advanced learning materials, as well as broad range of academic resources that would address executive functioning
- Parent's IEE was "fundamentally flawed," as neuropsychologist did not observe Student in his educational setting, nor did he speak to any of Student's teachers

(Student v. San Diego Unified School Dist. (OAH 2025) Case No. 2024090930, 125 LRP 9753)

Case Example #2

Facts

- Student was eligible under the categories of SLD and OHI
- District placed student in general education class, offering special education and related services on push-in and/or pull-out basis
- Parents challenged three IEPs developed by District between 2018 and 2020, claiming, among other allegations, that IEPs denied FAPE to student by failing to offer services to address student's executive functioning needs
- Parents contended that District's special education and related services should have included specific targeted program to address executive functioning deficits, based upon recommendations of their independent evaluator

Case Example #2

Decision

- ALJ upheld District's services to address Student's executive functioning deficits
- November 2018 IEP included numerous and appropriate accommodations focused on executive functioning, including repeated or simplified instructions, breaking down information in manageable chunks, asking Student to paraphrase back in his own words to check for understanding, etc.
- By 2019, Student made meaningful progress without any separate targeted program and November 2019 IEP team had no reason to believe that he needed any such program
- Similarly, District's 2020 IEP provided accommodations and supports carried over from previous IEPs and provided direct specialized academic instruction to work on weekly goals, learn study skills, organize schedules and assignments, and practice other executive functioning skills

(Student v. San Marcos Unified School Dist. (OAH 2021) Case No. 2020110479, 121 LRP 24503)

Case Example #3

Facts

- Student's anxiety, withdrawal, and depression impeded his learning and learning of others
- Student was inattentive, fidgeted with items, squirmed, disturbed peers, and eloped
- No positive behavior interventions, BIP, behavior services, or offer to assess his behavioral needs were provided (because they would change the "Montessori environment")
- Parents placed student in NPS and sought reimbursement
- NPS offered small ratio of staff to students in structured classroom; use of behavior strategies and strategies designed to reduce stress; and multilevel strategies used to alleviate executive functioning problems

Case Example #3

Decision

- ALJ ruled in favor of Parents, awarding \$20,709 in reimbursement
- Charter School predetermined placement, services and accommodations to fit its Montessori model, not to meet Student's needs
- Student's anxiety, inattention, and withdrawal impeded his ability to receive instruction and to benefit from his educational placement
- NPS used executive functioning strategies that proactively facilitated Student's attention to work and classroom participation
- Staff also used strategies designed to reduce stress, such as pre-teaching, and repeated instruction

(Student v. Dehesa School District and Community Montessori Charter School and Dehesa School District and Community Montessori Charter School. v. Student (OAH 2017) Case Nos. 2016090241 and 2016080384, 69 IDELR 230)

Practical Pointers: IEP Development and FAPE

- Ensure IEP team, staff members know how executive functioning deficits might manifest
- Make use of IEP team members' expertise and experience with respect to executive functioning
- Identify student's specific constellation of strengths and needs, which can change over time
- Consider needed accommodations, or whether executive functioning requires more specific instruction
- Develop plan to support student's independence as student ages and educational responsibilities shift

Practical Pointers: IEP Development and FAPE

- Bring current data on executive functioning issues to IEP team meeting to determine present levels; information that is not current can lead to flawed IEP
- Ask entire IEP team if they understand offer of FAPE; if they do not, or if there is any uncertainty, be sure to entertain and answer questions until there is no room for doubt
- Focus on details: include duration and frequency for all services on IEP; include start and end date for all services; specify how services will be delivered—individual or group, direct or consult, etc.; and always try to avoid phrase “as needed”

Take Aways . . .

- Executive functioning deficits can be present in connection with several underlying disabilities
- Districts should:
 - **Recognize** characteristics associated with executive functioning deficits
 - **Assess** when needed, using appropriate tests and observational tools
 - **Address** executive functioning deficits through IEP goals, services and accommodations to enable student to make progress in light of student's circumstances



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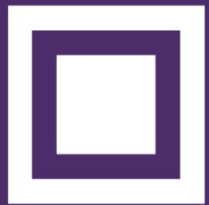
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Legal Update





Recent OAH Decisions

Discipline/Procedural Protections

Downey Unified School District

Facts:

- During first grade, general education Student participated in “Healthy Friendships” group to help create positive relations with others, but Father believed participation was punitive for students with behavior problems
- On December 18, 2024, while in second grade, Student was accused of telling another student he was going to break a ruler and stab the other student; Student was also accused of saying he was going to “jujitsu” all over other student and stomp his foot
- Vice principal emailed Father that Student would need to undergo threat/risk assessment as condition to returning to school
- Student never received notice of suspension from District and school principal subsequently left voicemail with Father stating that Student was welcome to return
- Father claimed vice principal’s email constituted disciplinary removal and sought IDEA protections, including manifestation determination review

Discipline/Procedural Protections

Downey Unified School District

Decision:

- Father failed to establish that District had “basis of knowledge” that, prior to December 18, 2024 incident, Student was a child with a disability entitling Student to IDEA protections, including manifestation determination review
 - Father never requested assessment
 - Student’s participation in Healthy Friendships group in first grade to help create positive relations with others did not put District on notice
 - Student had no other reported behavior incidents before or after December 18, 2024
 - Neither first- nor second-grade teachers identified any concerning specific patterns of behavior, despite occasional encounters with frustration
 - Father’s complaint centered on assistant principal’s email and choice Father seemed to understand he was left with, which was to either allow his child be subjected to interview by crisis team or not be permitted to return to school

(Student v. Downey Unified School Dist. v. Student (OAH 2025) Case No. 2025010823, 125 LRP 9770)

Discipline/Procedural Protections

Why Does This Case Matter to Us?

- Districts are deemed to have knowledge that student is a child with a disability if, before the behavior that precipitated disciplinary action occurred, either:
 - Parent has expressed concern in writing to district supervisory or administrative personnel of the appropriate educational agency, or to a teacher of the child, that the child is in need of special education and related services; or
 - Parent has requested a special education evaluation of the child; or
 - Teacher of the child, or other district personnel, has expressed specific concerns about pattern of behavior demonstrated by the child, directly to the director of special education or other supervisory personnel
- None of these circumstances existed in this case

IEEs

Mt. Diablo Unified School District

Facts:

- District assessed Student with autism and hearing impairment in October 2022
- Parent requested psychoeducational and audiology IEEs in April 2025
- Parent filed for due process hearing in May 2025, claiming that District failed to fund IEEs or file for due process to defend its October 2022 assessments
- District contended that Parent's IEE request was not in disagreement with its 2022 assessments; rather, District believed that Parent sought updated present levels of performance to provide to private school to which Student was applying
- District further argued that Parent's IEE request was barred by two-year statute of limitations, and, accordingly, it was not required to fund requested IEEs or file for due process to prove its assessments were appropriate

IEEs

Mt. Diablo Unified School District

Decision:

- ALJ rejected District's defenses to Parent's claim, finding District committed procedural violation of IDEA
- Parent legitimately disagreed with District's assessments and fact that Parent may have provided additional context for disagreement should not disqualify IEE request
- Two-year statute of limitations did not apply to bar claim
 - District's reliance on OSEP opinion was unpersuasive, as OSEP opinions are merely guidance and Letter to Thorne "did not unambiguously stand for that proposition"
 - Prior OAH decisions applying two-year limitation period to IEEs were not binding authority
- But procedural violation did not deny FAPE, as no evidence established that District's failure to fund or file adversely impacted Parent's ability to participate in development of IEP

(Student v. Mount Diablo Unified School Dist. (OAH 2025) Case No. 2025050862)

IEEs

Why Does This Case Matter to Us?

- IDEA does not establish limitation on how long parents have to ask for IEE once district has completed its own evaluation
- In policy guidance issued in Letter to Thorne (OSEP 1990), upon which District unsuccessfully relied in this case, OSEP said that “it would not seem unreasonable for the public agency to deny a parent reimbursement for an IEE that was conducted more than two years after the public agency’s evaluation”
- This limitation period coincides with IDEA’s two-year statute of limitations for filing due process complaints
- Generally, past decisions from OAH have agreed with OSEP’s position, citing to Letter to Thorne

IEP Team Members

Escondido Unified School District

Facts:

- For TK, District offered Student with autism, OHI and SLI placement in mild-moderate social communication special day class at District elementary school with general education curriculum
- Student struggled with behavior and engaged in multiple episodes of aggression
- District held two IEP team meetings in September 2024, at which it proposed change of placement to “Social Emotional Academic Success” program at another elementary school
- General education teacher was not present at either meeting
- After Parents refused to consent to offer, District filed for due process, seeking to implement IEP absent parental consent

IEP Team Members

Escondido Unified School District

Decision:

- District failed to prove September 2024 IEPs offered FAPE to Student
- Purpose of meetings was to review assessments that had recommended aide and change in placement
- There was no way to determine whether participation of general education teacher would have changed results of IEP team's recommendation
- Any excusal by Parents of general education teacher was not in writing, as required
- Absence of general education teacher at IEP team meetings seriously infringed on Parent's meaningful participation at those meetings

(Escondido Unified School Dist. v. Student (OAH 2025) Case No. 2024100187, 125 LRP 4088)

IEP Team Members

Why Does This Case Matter to Us?

- “The IEP team must include not less than one general education teacher of the student, if the student is, or may be participating in, the regular education environment. The general education teacher of each student, to the extent appropriate, must participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the student, and the determination of supplementary aids and services, program modifications, and supports for school personnel . . .” (Ed. Code, § 56341, subd. (b)(2))
- The Ninth Circuit has held that the lack of general education teacher at IEP team meeting, standing alone, is structural defect that denies FAPE. (M.L. v. Federal Way School Dist. (9th Cir. 2005) 394 F.3d. 634, 105 LRP 13966)

IAES

Corona-Norco Unified School District

Facts:

- Elementary-school Student with OHI engaged in frequent and aggressive behaviors resulting in injury to staff and other students
- After multiple suspensions, subsequent MD review meetings found Student's behavior was related to disability
- Student was subsequently found to meet ED eligibility criteria
- When Student's violent behaviors (against staff and other students) continued, IEP team proposed change of placement to intensive intervention program at SDC
- Parents believed Student could continue to be educated at current elementary school and that District staff was inadequately trained to help Student

IAES

Corona-Norco Unified School District

Decision:

- ALJ upheld District's request for 45-day IAES at intensive intervention program
 - School staff and other students were afraid of Student and concerned he could cause greater harm to himself or others if he remained at his school
 - District made considerable attempts to modify Student's behavior in general education setting, but attempts were unsuccessful
 - District established that placement at the intensive intervention program was appropriate IAES
 - Intensive intervention program staff could implement Student's IEP goals and accommodations, as well as deliver instruction, services, and supports offered in Student's IEP to ensure Student continued to receive FAPE

(Corona-Norco Unified School Dist. v. Student (OAH 2025) Case No. 2024120668, 125 LRP 4096)

IAES

Why Does This Case Matter to Us?

- District may request a due process hearing to authorize change of placement if district believes that maintaining student's current placement is substantially likely to result in injury to student, or to others (34 C.F.R. § 300.532(a).)
- Citing to various OAH due process decisions, ALJ noted that behaviors that have been found likely to result in injury include: (1) hitting an adult in the back, lunging at, and trying to punch and hit the teacher, and yelling at and threatening people; (2) throwing desks, knocking over a computer, yelling and screaming, hitting, kicking, punching, and biting adults; and (3) throwing objects, kicking other children, punching and kicking school staff, eloping from school, knocking over another child, screaming, and destroying property
- Student in this case displayed all of these behaviors

Manifestation Determinations

Atascadero Unified School District

Facts:

- High school Student with ED exhibited tendency to fight when dysregulated, which had appeared by second grade
- By high school, Student had been involved in gang activity; placed in RTC; was arrested and placed on probation; and spent time in Juvenile Hall
- District assessment indicated that Student had difficulty with self-control of emotions and described Student as having “catastrophic” reactions to everyday occurrences
- On first day of returning to District high school, Student engaged in fight with another student (“E.G.R.”) and was recommended for expulsion
- MD team found that Student’s behavior was not manifestation of his ED
- Parent disputed MD team’s conclusion at due process

Manifestation Determinations

Atascadero Unified School District

Decision:

- ALJ overturned MD team's finding, ruling that evidence supported conclusion that Student's engagement in fight had direct and substantial relationship to his ED
 - Two campus supervisors were most important witnesses, but no evidence that their understandings of fight were adequately conveyed to the MD team
 - MD team had no knowledge of angry exchange between Student and E.G.R. less than 20 seconds before the fight began, in which E.G.R. cursed at Student, triggering response
 - ALJ: Even if fight was not spontaneous, student with ED can plan event and engage in it as result of ED
 - Evidence showed that Student did not attack E.G.R. at direction of gang, as District contended
 - ALJ: Incident, in response to vulgar verbal provocation, was similar to, and consistent with, many historical instances of violence rooted in Student's ED

(Student v. Atascadero Unified School Dist. (OAH 2025) Case No. 2025010625, 125 LRP 9765)

Manifestation Determinations

Why Does This Case Matter to Us?

- IDEA requires that all relevant information in student's file, including IEP, any observations of teachers, and any relevant information from parents must be reviewed to determine if the conduct was caused by, or had direct and substantial relationship to student's disability, or was direct result of district's failure to implement student's IEP
- In this case, MD team did not obtain first-hand information about fight, which, if it had such information, might have caused to reach a different conclusion

Offer of FAPE/Methodology

Fremont Union High School District

Facts:

- 21-year-old Student with autism was offered full-time placement at NPS with specialized academic instruction to be delivered through group instruction model, which was for entirety of his school day
- District also offered Student intensive individualized services, to be delivered with aide who helped Student access other services, including his SAI
- IEP did not indicate specific behavior intervention methodologies NPS staff would use
- Parent obtained IEE, which Parent claimed recommended individual 1:1 instruction accompanied by ABA support
- District asserted that Student did not require 1:1 instruction and that it was not required to identify specific methodology in its IEP document

Offer of FAPE/Methodology

Fremont Union High School District

Decision:

- ALJ found for District
 - Parent failed to prove that Student required 1:1 instruction to receive FAPE
 - District program specialist and Student's IEP case manager testified as to significant academic and social progress Student had made over previous school years while receiving group instruction
 - NPS staff used ABA techniques in conjunction with other methodologies
 - School staff needed flexibility with methodologies to address Student's changing needs
 - IEE did not state that Student required instruction through ABA methodology to receive FAPE; independent assessors did not testify at hearing to interpret IEE report
 - District's IEP was not required to specify any particular methodology

(Student v. Fremont Union High School Dist. (OAH 2025) Case No. 2025020023, 125 LRP 13475)

Offer of FAPE/Methodology

Why Does This Case Matter to Us?

- Methodology used to implement IEP is left to district's discretion so long as it is designed to meet student's unique needs, comports with student's IEP, and is reasonably calculated to provide educational benefit
- 9th Circuit has recognized that “teachers need flexibility in teaching methodologies because there was not a single methodology that would always be effective” (J.L. v. Mercer Island School Dist. (9th Cir. 2010))
- 9th Circuit also acknowledged that, in certain circumstances, “school districts should specify a teaching methodology for some students” (Id.)
- According to ALJ, IEPs should include a specific methodology “when the record shows IEP team member consensus on the issue”
 - No such consensus existed in this case

Transportation

San Diego Unified School District

Facts:

- Due to significant behavioral issues, District changed placement of Student with autism from his neighborhood elementary school to “STARS” program at school approximately 12 miles from Student’s home
- Student’s bus trip to new placement began at 6 a.m. for 7:55 a.m. school start
- Parent objected to long bus ride, citing “safety and emotional limitations” on long commutes and Student’s “sleep issues”
- IEP team met to review issue and suggested that Parent transport Student and be reimbursed
- Parent, however, could not get Student to school until after 9:30 a.m.
- Student’s ABA provider and neurologist opined that long bus commute would cause distress and impact Student’s ability to learn
- Parent claimed IEP team’s refusal to modify transportation offer resulted in denial of FAPE

Transportation

San Diego Unified School District

Decision:

- ALJ found for Parent
 - Parent adequately documented medical need for shorter bus trip and District offered “only workarounds,” that included mileage reimbursement and Parent drop-off at intermediate site
 - District knew of Student’s emotional dysregulation and sleep issues throughout entire 2024-2025 school year, as well as medical need for shortened bus route, and did not act
 - District could have, but did not, meet Student’s need for shorter bus route
 - Transportation supervisor testified that IEP team needed only to inform transportation department that student had medically certified needs requiring shorter bus ride and one would be arranged
 - ALJ ordered compensatory tutoring, reimbursement for Parent’s mileage, and ordered District to arrange transportation that would take no more than one hour for Student to get to school

(Student v. San Diego Unified School Dist. (OAH 2025) Case No. 2024100129, 125 LRP 16320)

Transportation

Why Does This Case Matter to Us?

- Nothing in IDEA or California law addresses maximum acceptable length of time of student's bus transportation
- As with all services in student's IEP, transportation services must be appropriate to student's needs and circumstances
- Various cases have held that mere desire for shorter ride time because of fatigue from long bus ride does not require route change
- However, where there is disability-related reason to require shorter bus ride, failure to shorten student's commute has been held to be denial of FAPE due to failure to provide appropriate related service



Noteworthy Decisions from the Courts

Child Find and Eligibility

F.C. v. Irvine Unified School District (C.D. Cal.)

Facts:

- Student began experiencing symptoms of Kleine-Levin Syndrome (“KLS”) in August 2019; KLS is characterized by recurrent bouts of excessive sleep and cognitive/ behavioral changes
- As result of his symptoms, Student missed extensive amount of classroom instruction and assignments, but passed all of his eighth-grade classes, which Parents attributed to private tutors
- When Student matriculated to high school for 2020-2021, Parents completed health form indicating no disabling conditions
- Parents withdrew Student from District in January 2021 and placed him in private school
- Student formally diagnosed with KLS in May 2021
- After Parents expressed interest in re-enrolling Student, District conducted assessment and concluded Student was not eligible for special education
- Parents claimed District violated child find and that assessments should have found Student eligible

Child Find and Eligibility

F.C. v. Irvine Unified School District (C.D. Cal.)

Decision:

- District court upheld ALJ's conclusion of no child find violation, as record did not establish that District knew or should have known that Student was child with a disability
- Prior to Student's formal diagnosis of KLS, Parents and doctors believed, and represented to District, that Student was exhibiting symptoms related to virus or infection
- ALJ also correctly determined that Student did not need special education or related services to access his education
- Even if Student had qualifying health condition, Student “did not meet the second requirement of the [eligibility] definition which required Student be unable to access the curriculum without specialized academic instruction”
- Accommodations provided to Student were sufficient to allow Student to pass his classes; Student understood curriculum, performed at grade level, and made progress in his studies

(F.C. v. Irvine Unified School Dist. (C.D. Cal. 2025) 125 LRP 2497)

Child Find and Eligibility

Why Does This Case Matter to Us?

- Child find duty is triggered when district has notice or reason to suspect that student has disability and may require special education; appropriate inquiry is not whether student qualifies for services, but rather, whether student should be referred for evaluation
- Duty can be triggered by the suspicion of either parents or district
- Action or inaction of district must be evaluated in light of information that district knew or had reason to know at the time
- In this case, considering Student's solid academic performance and Parents' assertion that Student did not require additional supports, record did not establish that District knew or should have known that Student was a child with a disability
- When Parents presented District with Student's diagnosis and requested IEP, District timely acted by meeting with Parents to discuss plan and subsequently providing assessment

IEP Development

E.C.D. v. San Diego Unified School Dist. (S.D. Cal.)

Facts:

- 8-year-old student qualified for special education under categories of hearing impairment and SLI
- District developed IEP that included 5 hours per week of DHH services in general education classroom
 - IEP included references to both Florence Elementary School (Student's home school) and Lafayette Elementary School as location for services
 - IEP notes clarified that IEP team recommended placement at Lafayette and made clear that "IEP document may contain errors that include 'Florence Elementary' in the document, as that is where [Student] is currently enrolled. That is not editable until enrollment changes."
 - District reaffirmed in IEP notes that, based on its assessments, it did not believe that full-time deaf education specialist desired by Parents was necessary for Student to benefit from his educational program and "can result in learned helplessness"
- Parents disputed IEP and sought reimbursement for private school placement

IEP Development

E.C.D. v. San Diego Unified School Dist. (S.D. Cal.)

Decision:

- District court affirmed ALJ's decision in District's favor
- Educational setting (Lafayette) offered by District was particularly suited to students who are deaf and hard of hearing
- Assessors credibly testified that Student did not need full-time DHH co-teacher
- Final draft of proposed IEP "removed all doubt and clearly established that the offer was for placement at Lafayette," and Parents understood it that way
- No evidence that Parents rejected offer of FAPE because of any confusion about offered location and IEP fully explained any errors in document, eliminating any possible confusion
- Even if offer was confusing, it would have constituted harmless error

(E.C.D. v. San Diego Unified School Dist. (S.D. Cal. 2025) 125 LRP 2365)

IEP Development

Why Does This Case Matter to Us?

- Generally, based on various OAH decisions, minor clerical or typographical errors in IEP document have not been enough to result in finding that district's offer was insufficiently clear or coherent
- For example, in Student v. Folsom Cordova Unified School District (OAH 2016), Parents claimed IEP lacked clarity because it referenced NPA behavior plan attachment, when instead attachment contained Student's NPA behavior goals; ALJ found that this was "merely a clerical error and did not create a lack of clarity or create confusion on the part of Parents"
- Similarly, in this case, evidence indicated that clerical errors in District's IEP did not create any confusion or cloud Parents' understanding of offer of FAPE

Residential Placement

Banta v. Hayashi (9th Cir.)

Facts:

- IEP for high-school Student with autism and ID provided for ABA services with BIP to be implemented by Registered Behavior Technician (“RBT”), as well as 1:1 individual instructional support throughout school day by RBT
- On August 25, 2022, Student’s RBT went on maternity leave, not returning until November 7, 2022
- School was not able to find a replacement RBT due to shortage on Kauai, so other school personnel pitched in to ensure that Student always had individual support
- Student had behavioral episodes at school, but behaved more aggressively at home with Parents, which ultimately resulted in his hospitalization
- Student’s private psychiatrist recommended Student be placed in residential treatment facility due to increase in violence against his family
- Father claimed that Student was denied FAPE because he had not received RBT services, and as a consequence, it was necessary to place Student in residential treatment program

Residential Placement

Banta v. Hayashi (9th Cir.)

Decision:

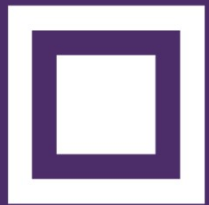
- 9th Circuit upheld district court's and hearing officer's findings in District's favor
- Student continued to make academic progress during RBT's absence
- Discrepancy with IEP was not material because Student received individualized support from other staff members and continued to make academic progress
- No evidence that any aggressive episodes at school during this time were result of failure to provide RBT services, as opposed to issues with Student's home life
- Father confirmed with social workers that Student's severe aggression started after Mother "left" rather than tracing it to absence of RBT services at school
- Even if there had been denial of FAPE, placement at residential treatment facility would not be appropriate remedy since such placement was not necessary for educational purposes

(Banta v. Hayashi (9th Cir. 2025, unpublished) 125 LRP 5426)

Residential Placement

Why Does This Case Matter to Us?

- “[T]he IDEA does not ... require [school districts] to address all of [a student's] medical concerns.” (Ashland School Dist. v. Parents of Student E.H. (9th Cir. 2009) 587 F.3d 1175, 1185 (citing 34 C.F.R. § 300.104))
- When court is presented with argument that student should have been provided residential placement, its “analysis must focus on whether the residential placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process.” (Id.)



Latest Federal Guidance

Inclusive Educational Practices

Dear Colleague Letter

- OSERS encouraged SEAs, LEAs, and school staff to uphold high expectations for academic and functional success of all students through use of inclusive educational practices
- Discussion included following requirements in IDEA and ESEA that align with inclusive educational practices:
 - Students with disabilities must be placed in general education classes consistent with LRE requirements
 - Same challenging state academic standards must apply to all public schools and all public school students in state (except for small percentage of students with the most significant cognitive disabilities for whom the state may define alternate academic achievement standards aligned with the state's content standards)
 - Plans developed by state, LEA, or school under Title I of ESEA must be coordinated with programs carried out under IDEA
 - IEPs must be designed to meet student's needs to enable student to be involved in and make progress in general education curriculum
 - Students with disabilities must be provided appropriate special education and related services, supplementary aids, and supports in the general education classroom, whenever appropriate based on student's IEP

(Dear Colleague Letter on Building and Sustaining Inclusive Educational Practices (OSERS/OESE January 2025) 125 LRP 2423)

Transition Services

Coordinating Transition Services and Postsecondary Access

- OSERS FAQ urged SEAs, LEAs and vocational rehabilitation (“VR”) agencies to work together to ensure that students with disabilities successfully transition to postsecondary life
- When deciding whether district or VR agency will pay for a particular transition service, districts should consider whether service is one that district would customarily provide as component of FAPE
- Criteria for determining financial responsibility may include following considerations:
 - Is the purpose of service related to employment outcome or education?
 - Is service usually considered special education or related service necessary for provision of FAPE?
 - Is service one that school customarily provides under IDEA?
 - Is student with disability eligible for transition services under IDEA or under Section 504?

(Coordinating Transition Services and Postsecondary Access: Guidance on Requirements Under the IDEA and the Rehabilitation Act (OSERS 2025) 125 LRP 2265)



New Developments Affecting Special Education

Supreme Court Update

Oklahoma Statewide Charter School Board v. Drummond (05/22/25)

- SCOTUS, without discussion, upheld Oklahoma State Supreme Court ruling barring state approval of creation of Catholic charter school on First Amendment Establishment Clause grounds
- Proposed charter school's curriculum was, reportedly, "infused" with religious teaching and, under Oklahoma law, only nonsectarian schools can become charter schools, which are public schools
- After Justice Amy Coney Barrett recused herself, remaining Justices were evenly split in their opinions, which, under Supreme Court rules, means decision under review stands
- SCOTUS likely will have other opportunities to again consider whether religious schools could also be public charter schools
- Future decision likely will affect those schools' obligations to implement IDEA and serve students with disabilities under IDEA

Supreme Court Update

A.J.T. v. Osseo Area Schools (06/12/25)

- Unanimous ruling by SCOTUS aligns, nationwide, liability standard for disability discrimination in education context with that applied in non-educational contexts
- Decision in favor of student with epilepsy overturned higher burden of proof for students and families in disability disputes
- Prior A.J.T., Circuit Courts were split on correct standard for proving disability discrimination in schools, with 8th Circuit (comprised primarily of Midwestern states) requiring that student prove that school district acted in “bad faith or gross misjudgment” to prove school-based disability discrimination

Supreme Court Update

A.J.T. v. Osseo Area Schools (06/12/25) (cont'd)

- Opinion brings 8th Circuit in line with discrimination caselaw in non-educational contexts, which allows finding of intentional discrimination through proving “deliberate indifference”—generally defined as a district’s disregard for the strong likelihood that the action would violate a federally protected right
- 9th Circuit currently adheres to the “deliberate indifference” standard
- As such, states in 9th Circuit (including California) will not be impacted by this decision
- Nonetheless, this ruling underscores need for school systems to re-evaluate their policies and practices in evaluating disability-based accommodations

Loffman v. California Department of Education— **Litigation and Settlement**

- By way of background, California contracts with certain “nonpublic schools” to provide FAPE to students with disabilities; by statute, California requires that NPS be “nonsectarian” to apply for certification as an approved NPS
- Under state regulatory definition of “nonsectarian,” no school with religious affiliation can serve as approved NPS, regardless of content of its curriculum
- Parents of Students with autism, who wanted their children to attend Orthodox Jewish schools, alleged that CDE’s refusal to add religious schools to its list of certified NPSs violated First Amendment’s Free Exercise Clause and 14th Amendment’s Equal Protection Clause
- Parents successfully alleged that state (i.e., CDE) burdened their sincere religious practice by enforcing policy that was neither neutral nor generally applicable
- In 2024, 9th Circuit ruled that CDE did not show that nonsectarian requirement was narrowly tailored to serve compelling interest in neutrality

Loffman v. California Department of Education— **Litigation and Settlement (cont'd)**

- After 9th Circuit's decision, District and CDE reached settlement with Parents in May 2025, in which they agreed to permanent injunctions providing that they will no longer enforce “nonsectarian requirement” set forth in Education Code for certification of nonpublic schools
- In its order adopting parties' consent judgment, U.S. District Court, Central District of California declared nonsectarian requirement “facially unconstitutional” and prohibited CDE from enforcing it (Loffman v. California Department of Education (C.D. Cal. 5/19/2025))
- Under consent judgment, CDE may no longer limit its list of certified nonpublic schools to nonsectarian schools or agencies
- Court ordered CDE to make that change “immediately”
- Districts will still need to ensure that any religious school sectarian placements they arrange for students with disabilities meet IDEA requirements, including ability to implement IEPs

New Laws and Pending Legislation

AB 560—Workload

- Currently pending, AB 560 would require districts to take all reasonable steps to distribute workload associated with initial assessments across all resource specialists employed by the district in equal manner, unless otherwise collectively bargained
- AB 560 would also require Superintendent of Public Instruction, on or before July 1, 2027, to establish a maximum recommended adult-to-pupil staffing ratio for special classes and to post recommendation on CDE's internet website

AB 764—Definitions

- Signed into law July 14, 2025, effective January 1, 2026
- AB 78 adds “specialized deaf and hard of hearing services” to those services included in the definition of special education under Education Code section 56031, subdivision (b)(1)
- Amends Education Code section 56035's definition of a “nonpublic, nonsectarian agency” to include provision of specialized instruction by a credentialed teacher

New Laws and Pending Legislation

AB 1412—Out-of-State Transfer Students

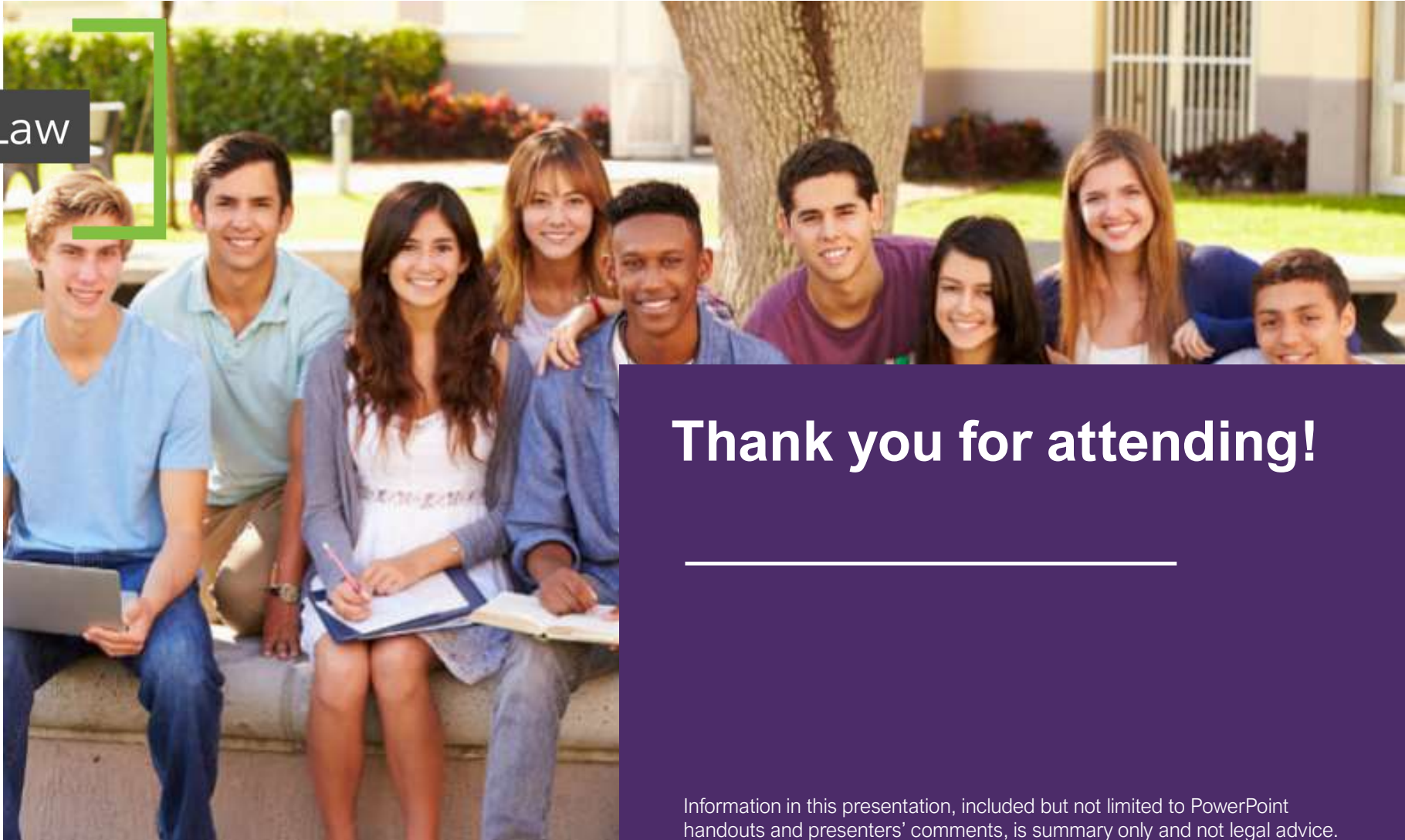
- Currently pending, AB 1412 would require district, within 30 days of receiving records of student who is transferring from outside state, to either adopt and implement IEP previously adopted for student or to develop, adopt and implement new IEP for student

SB 373—NPS Requirements

- Currently pending, SB 373 would require, commencing with 2026–2027 school year, that Superintendent of Public Instruction, before certifying a nonpublic, nonsectarian school, take additional actions, including reviewing policies on restraint and seclusion to evaluate consistency with California laws and interviewing students with IEPs to discuss progress and address any concerns respecting any limitations due to student's disability
- SB 373 also would require monitoring visit required for each student placed at nonpublic, nonsectarian school to include in-person interview with student, in manner consistent with student's IEP, to evaluate student's health and safety



F3 Law



Thank you for attending!

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