

Ensuring Parent Participation and Avoiding Predetermination

What We'll Cover . . .

- Who Is a Parent
 - Participation by Divorced Parents
- Conducting the IEP Team Meeting
 - Right to Request and Attend Meetings
 - Conducting Meetings Without Parents
 - Other Parent Rights
- Formulating and Implementing the IEP
 - Predetermination
 - Other Parent Rights, Including Duty to Consider IEEs and Consent Requirements

Rule of Thumb

All communication (verbal and written) must be child-centered!

Introduction

- One of the cornerstones of special education law is maximum practical participation by parents in development of each student's IEP
- Many protections are built into IDEA to facilitate this participation
- Due process filings and state compliance complaints alleging that parents were excluded from IEP process have increased tremendously over past 10 years (e.g., predetermination claims)
- Issue for administrative officers and courts: whether any lack of parental participation was a procedural violation of IDEA resulting in denial of FAPE



Who Is a Parent?

IDEA Definition of “Parent”

- Biological or adoptive parent
- Foster parent (if authority of biological/adoptive parent limited by court order)
- Guardian generally authorized to act as child’s parent, or authorized to make educational decisions for the child
- Individual acting in place of biological or adoptive parent (including grandparent, stepparent or other relative) with whom the child lives, or individual legally responsible for child’s welfare
- Duly appointed surrogate parent

(34 C.F.R. § 300.30; Ed. Code, § 56028)

Who Can Not Qualify as Parent?

- The state or any of its subdivisions
- Nonpublic school or agency under contract with district for provision of special education

(Ed. Code, § 56028)

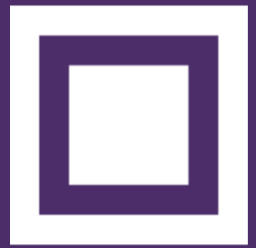
Divorced Parents

- IDEA rights, including right to attend IEP meetings and participate in IEP development, apply to both parents, unless court order specifies otherwise

(34 C.F.R. § 300.30; 71 Fed. Reg. 46568 (2006))

Practice Pointers: Divorced Parents at IEP Team Meeting

- Obtain copy of current court decrees that might affect parents' right to participate/make educational decisions
- Speak with each parent prior to meeting to answer any questions and determine if issues other than those related to IEP might arise



Conducting the IEP Team Meeting

What Is (and What Is Not) an IEP Team Meeting?

Any meeting that addresses

- Identification;
- Evaluation;
- Placement; or
- Provision of FAPE

is likely to be deemed an IEP meeting requiring parental participation, even if not officially designated as such

What Is (and What Is Not) an IEP Team Meeting?

Three situations that do not require parental participation:

- Informal, unscheduled conversations among staff
- Staff discussions on issues such as teaching methodology, lesson plans or coordination of services
- Preparatory activities to develop proposal or response to parent proposal that will be discussed at later meeting

(34 C.F.R. § 300.501(b)(3))

Parent's Right to Request IEP Team Meeting

- District must convene meeting when parents request to develop, review or revise IEP
- Must be held within 30 days of receipt of written request, not counting breaks in excess of five school days
- If parents make verbal request, district must notify them of need to put request in writing and provide procedures for submitting to district

(Ed. Code, § 56343.5)

IEP Team Meeting Notice

Content:

- Purpose, time and place of meeting
- Who will be attending
- Inform parents of right to bring individuals with knowledge or special expertise about student
- Note: Special rules apply for notice of meetings to discuss postsecondary transition services

(34 C.F.R. § 300.322; Ed. Code, § 56341.5))

IEP Team Meeting Notice

Timing:

- Early enough to ensure parents will have opportunity to attend
- OSEP suggests 10-day advance notice, but no formal requirement
- But one-day notice clearly is insufficient
 - E.g., Twin Rivers USD v. Student (OAH 2011): Email to Parent stating that IEP team meeting would be held “tomorrow” denied meaningful opportunity to participate

(34 C.F.R. § 300.322; Letter to Constantian (OSEP 1990) 17 IDELR 118; Twin Rivers Unif. School Dist. v. Student (OAH 2011) Case No. 2011020609, 57 IDELR 177)

Deficient Notice as Denial of FAPE

- If faulty (or tardy) notice deprives parent of ability to participate in IEP process, it can be basis for finding of denial of FAPE
- But when parents are still able to participate fully despite faulty notice, procedural violation generally will not be sufficient to deny FAPE

Case Example

Los Angeles Unified School District (OAH 2019)

- District administrator telephoned Parent of 8-year-old with autism asking her to meet on following day
- Parent thought she would be meeting just with two administrators, but entire IEP team was present
- Administrator provided notice at meeting as formality
- District sought to implement IEP developed at meeting absent parental consent
- ALJ refused: Lack of notice denied FAPE because it “denied Parent her opportunity to adequately prepare for the IEP meeting, and may have contributed to Parent’s misunderstanding of [District’s] IEP offer”

(Los Angeles Unif. School Dist. v. Student (OAH 2019) Case No. 2019030744, 119 LRP 25488)

Practice Pointers: IEP Team Meeting Notice

- Case decisions on improper notice have focused on the following issues:
 - Providing sufficient time in advance of meeting
 - Listing individuals being invited to attend
 - Stating purpose of meeting
 - Accurately identifying time, date and location
- Document and make copies of all notices sent, as paper trail may be important

Practice Pointers: IEP Team Meeting Notice

- When district intends to hold virtual IEP team meeting, be sure meeting notice includes name of virtual platform (with instructions on how to participate)
- Send parents link to meeting on same day you send notice, as well as on day before meeting as reminder

Scheduling IEP Team Meetings

- “Mutually agreed time and place”
- Standard of reasonableness should apply
- Not unreasonable to schedule team meetings during regular business hours
- But there might be circumstances where parents’ employment situation restricts availability; districts should be flexible in those instances

(34 C.F.R. § 300.322(a)(2); Letter to Thomas (OSEP 2008) 51 IDELR 224)

Alternative Means of Participation

- Parents and district may agree to use alternative means of participation for IEP team meetings, including video conferencing and conference calls
- Both parties must consent
- If additional costs result, district is responsible

(34 C.F.R. § 300.328; 71 Fed. Reg. 46687 (2006))

Conducting IEP Team Meetings Without Parents

- Parents have absolute right to attend all IEP team meetings (even when districts are certain they will reject proposed course of action)
- District must make every effort to secure presence of parents

(Shapiro v. Paradise Valley Unif. School Dist. (9th Cir. 2003) 38 IDELR 91)

Conducting IEP Team Meetings Without Parents

- Meetings may be conducted without parents only if district “is unable to convince parents that they should attend”
- Must keep records of attempt to arrange meeting
 - Log of phone calls
 - Copies of correspondence
 - Document visits to home/work

(34 C.F.R. § 300.322(d); Ed. Code, § 56341.5, subd. (h))

Conducting IEP Team Meetings Without Parents

Circumstances where districts may hold meetings without parents are decided on case-by-case basis, taking into account actions by both parties before (and sometimes after) IEP team meeting

Consider the following case examples . . .

Case Example #1

Doug C. v. Hawaii Department of Education (9th Cir. 2013)

- School wanted to hold IEP meeting before annual review deadline
- Parent could not be present during various dates proposed by team (and did not want to participate by phone), so meeting proceeded without him
- Failure to include Parent infringed on ability to participate, denied FAPE
- 9th Circuit: “Under the circumstances of this case, the [school’s] decision to prioritize strict deadline compliance over parental participation was clearly not reasonable”
- Fact that it might have been frustrating to schedule meetings with Parent or difficult to work with him did not excuse failure to include him in Student’s IEP meeting

(Doug C. v. State of Hawaii Dep’t of Educ. (9th Cir. 2013) 61 IDELR 91)

Case Example #2

Larchmont Charter School (OAH 2021)

- Parents disenrolled Student from private school and placed him in Charter School
- Annual IEP was due 9/11 and triennial was due on 9/26
- Parents agreed to waive triennial reassessment but would not confirm annual IEP meeting date (as well as rescheduled date)
- Parents disenrolled Student from Charter School on 9/16, placing him in private school
- Subsequent due process claim alleged District violated IDEA by not holding annual meeting by due date of 9/11

Case Example #2 (cont'd)

Larchmont Charter School (OAH 2021)

- ALJ found in favor of Charter School
- Parents failure to confirm meeting date placed Charter School in dilemma of meeting legal deadline vs. ensuring Parents' participation in IEP process
- Decision not to hold meeting without Parents was reasonable
- Charter School believed it could continue to provide services to Student even if annual IEP team meeting was not timely held
- Parents were contemplating disenrolling Student in early September, which was likely reason they failed to respond

(Student v. Larchmont Charter School (OAH 2021) Case No. 2021030156, 121 LRP 33783)

Case Example #3

Los Angeles Unified School District (OAH 2019)

- Student's annual IEP team meeting was due in August before school year began
- To meet statutory timeline, District sought to hold meeting in May before teachers went on summer break
- When Parents did not respond to notice of meeting, they were given choice of alternate dates (5/24 or 5/31)
- Mother responded on 5/30 indicating she wished to be at meeting but had doctor's appointment; meeting proceeded without Parents
- District finalized IEP and offered to convene another meeting after new school year began to discuss it with Parents

Case Example #3 (cont'd)

Los Angeles Unified School District (OAH 2019)

- District violated IDEA by holding annual IEP team meeting without Parents
- ALJ: “[District] made clear that it was prioritizing its staff’s scheduling over parental participation in violation of ruling in Doug C.”
- Parents had never missed previous meeting and Mother indicated desire to attend
- Offering to convene another meeting when new school year began was “after-the-fact” parental involvement

(Student v. Los Angeles Unif. School Dist. (OAH 2019) Case No. 2019071112, 76 IDELR 22)

Practice Pointers: Conducting IEP Team Meetings Without Parents

- Be sure to comply with legal requirements to document efforts to persuade parents to attend
- Explore other means of participation, if feasible
- Send copy of any IEP developed without parents
- Offer to reconvene IEP team when parents are available

Interpreters at IEP Team Meetings

- Districts must take whatever steps are necessary to ensure parents understand proceedings of meeting
 - Includes arranging for interpreter for parents with deafness or whose native language is other than English
 - OCR: Failure to provide interpreter and written translation during IEP process may violate Section 504

(34 C.F.R. § 300.322(e); Ed. Code, § 56341.5, subd. (i); Victor Valley (CA) Unified School Dist. (OCR 2007) 50 IDELR 141)

Practice Pointers: Interpreters at IEP Team Meetings

- Obligation to provide interpretation is on district
 - Even if parents offer to bring interpreter, consider inviting member of staff who can interpret
- Be careful about using outside sources to obtain interpreter or translator
- Ensure that any interpreter or translator is familiar with special education terminology

Recording IEP Team Meetings

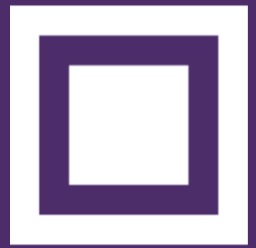
- Both districts and parents have right to audio record meeting
 - 24-hour notice required
 - District may not record if parent objects
 - Recording becomes education record subject to FERPA
- Parents may:
 - Inspect and review recording
 - Request amendment if they believe recording is inaccurate or misleading

(Ed. Code, § 56341.1, subd. (g))

Right to Representation at IEP Team Meetings

- OSEP has acknowledged that both districts and parents may invite their attorneys to IEP team meeting as part of team if attorneys “possess knowledge or special expertise regarding the child”
- OSEP: “An attorney’s presence would have the potential for creating an adversarial atmosphere that would not necessarily be in the best interests of the child. Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged”

(Letter to Clinton (OSEP 2001) 37 IDELR 70)



Formulating and Implementing the IEP

Predetermination

- Occurs when districts decide on IEP content/issues prior to IEP team meeting precluding meaningful parental participation
- Allegations of predetermination frequently arise with respect to:
 - Preparatory meetings
 - Draft IEPs
 - (Lack of) meaningful discussion at IEP team meeting

Preparatory Meeting

- Districts may engage in preparatory activities to develop a proposal or response to parent proposal that will be discussed at later meeting
- Example: Staff may review assessment recommendations or placement options in advance of meeting, but must discuss those options with parents and make decisions at the IEP meeting
- Difference between preparation and predetermination is sometimes hazy

(34 C.F.R. § 300.501(b))

Draft IEPs

- Permissible to develop draft IEP
 - Share with parents before or during meeting
 - Must be used for discussion purposes only
 - Cannot be presented as completed document
- USDOE: If draft IEP is developed, district should:
 - Make clear to parents at outset of meeting that it is preliminary recommendation for review and discussion
 - Provide parents with copy

(Letter to Helmuth (OSEP 1990) 16 IDELR 503; 71 Fed. Reg. 46678 (2006))

Case Example

Alta Loma Elementary School District (OAH 2020)

- Parent claimed predetermination, alleging that draft IEP presented to her at IEP team meeting indicated child's placement in moderate-to-severe classroom
- ALJ rejected charge
- Software program that generated draft IEP filled in document with Student's previous placement
- Team members clearly informed Parent that IEP document used at meeting was only a draft
- Draft was amended or modified several times during meeting following team discussions

(Student v. Alta Loma Elem. School Dist. (OAH 2020) Case No. 2019090224, 120 LRP 12213)

Practice Pointers: Draft IEPs

Consider the following to avoid any appearance of predetermination when using draft IEPs

- Stamp or write “DRAFT” on each page
- Ask for parent feedback throughout meeting
- Keep detailed notes and handwrite changes on draft
- Do not complete FAPE offer portion of draft IEP prior to meeting
- Consider saving draft with handwritten notations to allow comparisons with final IEP

Meaningful Discussion

- Parents' presence at meeting is not enough
 - Must have opportunity to voice concerns
 - Must have their input considered by the team
 - Must have opportunity to ask questions and be provided with meaningful answers
- “Take it or leave it” approach evidences predetermination

Case Example #1

San Francisco Unified School District (OAH 2026)

- Middle-school Student with autism was placed in mild-to-moderate special day class, where he continued to exhibit maladaptive behaviors that had been present in earlier grades
- Behaviors included elopement and self-injury, along with attacks on others, destruction of school property and increasing isolation in sensory room
- Teacher and aide notified Parents via email and Student's communication log whenever behavior episodes occurred
- Parents alleged that District impeded their participation in IEP process by failing to communicate all relevant information regarding function, severity, and description of Student's behavior, including failing to file behavior emergency reports
- Parents further contended that District denied Student FAPE by failing to meaningfully consider recommendations of their independent educational evaluator at IEP team meetings

Case Example #1 (cont'd)

San Francisco Unified School District (OAH 2026)

- ALJ ruled in District's favor on all procedural claims
 - Behavioral issues cited by Parents did not require behavior emergency report because emergency interventions were neither required nor instituted
 - All behavioral incidents were promptly reported to Parents by Student's teacher and aide on day they occurred and teacher then provided complete detailed reports of all incidents
 - ALJ: Parents were given all information necessary to allow for meaningful participation and to allow them to follow up or call for IEP team meeting had they so desired
 - Parents pointed to no law that required District to notify them each time Student utilized sensory room in classroom setting, which was part of Student BIP and agreed to by Parents
 - District's IEP team members appropriately considered Parents' independent evaluator's recommendation for residential treatment

(Student v. San Francisco Unif. School Dist. (OAH 2026) Case No. 2025080736, 126 LRP 5124)

Case Example #2

Palo Alto Unified School District (OAH 2026)

- High school Student with autism and OHI was unilaterally placed at small private school
- In March 2023, Parents requested District develop IEP
- District developed IEP in August 2023, with amended IEPs in May 2024 and December 2024
- Parents challenged IEPs through due process, with OAH concluding that District, among other violations, predetermined placement/services at its high school and denied FAPE with inappropriate transition plan
- While Student was still attending private school, Parents requested District develop another IEP
- IEP team met in May 2025, offering same placement and services that OAH had found inappropriate, only changing service dates

Case Example #2 (cont'd)

Palo Alto Unified School District (OAH 2026)

- ALJ ruled that District made no meaningful effort to offer Student FAPE during May 2025 IEP team meeting
 - District refused to discuss nonpublic placement requested by Parents and had already decided to offer placement at its high school—identical to placements offered in May 2024 and December 2024 IEPs that OAH later found to be predetermined
 - District did not consider the continuum of placement options or any current information regarding Student “during the brief 37-minute meeting”
 - District also failed to solicit or consider input from Parents or other IEP team members
 - “Although [District] was not required to offer Parents' preferred placement, it was required to consider parental input and develop an IEP based on Student's current needs. [District] failed to do so. Instead, it presented a predetermined, take-it-or-leave-it IEP, that did not reflect Student's present levels of performance or meaningful parental participation.”

(Student v. Palo Alto Unif. School Dist. (OAH 2026) Case No. 2025070906, 126 LRP 3081)

Practice Pointers: Meaningful Discussion

Consider these tips to ensure meaningful participation

- Explain purpose and reason behind any preparatory meeting
- Be careful of statements at IEP meeting suggesting:
“Here’s what we decided”
- When option is proposed, seek parents’ input/response
- Give parents enough information about all possible placements so that they can take part in discussions
- Ensure enough time for questions

Other Parent Rights Re: IEP Development

- Documenting Parent Concerns and Objections
 - IDEA requires team to consider concerns for enhancing education of student
 - Team should specifically ask parent about concerns and indicate on IEP document that it has done so
- Right to Copy of IEP Document
 - IDEA requires district to provide IEP copy at no cost
 - California requires free copy in parents' primary language

(34 C.F.R. § 300.324(a)(1); 34 C.F.R. § 300.322(f); Cal. Code Regs., tit. 5, § 3040(b)))

Other Parent Rights Re: IEP Development

- Right to Be Informed of Student's Progress
 - Each IEP must include description of how and when parents will be informed of progress student is making toward meeting annual goals (such as through use of quarterly or other periodic reports, concurrent with issuance of report cards)
 - Includes progress reporting on postsecondary goals

(34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3); Letter to Pugh (OSEP 2017)
69 IDELR 135)

Other Parent Rights Re: IEP Development

- Right to Have IEP Team Consider IEE
 - IEP team has duty to consider any IEE shared by parents, if IEE meets district criteria
 - Duty to consider does not equate to duty to accept recommendations
 - No IDEA provision setting parameters for what it means to “consider”

(34 C.F.R. § 300.502(c); Ed. Code, § 56329, subd. (c))

Case Example

Torrance Unified School District (OAH 2016)

- Parent of 16-year-old with autism requested IEP team meeting to review independent assessment of Student's cognitive abilities
- District team members agreed to convene to discuss the report, but subsequently cancelled the meeting
- ALJ: “[I]t is difficult to see how the impact of the independent assessment, if any, on the FAPE for a child can be determined without an IEP team meeting and the participation of the parent”
- Questionable testimony as to whether team members even considered report among themselves

(Student v. Torrance Unif. School Dist. (OAH 2016) Case No. 2015100570, 116 LRP 20201)

Practice Pointers: Considering IEEs

Document the following in IEP team meeting comments as evidence that team members discussed and considered IEE

- That IEP team considered the report
- That IEP team discussed the report
- Whether IEP team members agreed or disagreed with the facts, opinions, conclusions and recommendations contained in the report

Take Aways . . .

- Understand broad range of responsibilities to ensure meaningful parent participation in IEP process
- Attempt to develop ongoing and collaborative relationship with parents
- Emphasize meaningful participation as the standard for IEP team meetings and entire IEP development process



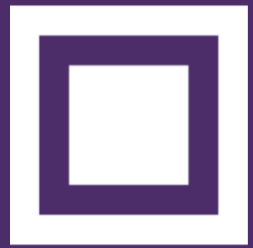
F3 Law

Manifestation Determinations ... and More



What We'll Cover . . .

- Removals that Do and Do Not Trigger Obligation to Conduct Manifestation Determinations (“MDs”): A Brief Overview
- MDs: Procedural Compliance
- MDs for Students Who Are Not Yet Eligible for Special Education
- MDs: At the Meeting
- MDs: After the Meeting



Removals that Do and Do Not Trigger MDs

Removals: A Quick Refresher

- MDs must be undertaken when district's proposed removal of student who violates code of student conduct amounts to change in placement
- “Removal” occurs when student cannot continue to:
 - Appropriately progress in general curriculum
 - Receive services specified in IEP; and/or
 - Participate with nondisabled students to extent student would have in student's current placement
- When does removal = change in placement?

(71 Fed. Reg. 46715 (Aug. 14, 2016))

Removals: A Quick Refresher

4 Categories of Removal

10 School Days or Less = No Change of Placement

>10 Cumulative Days (No Pattern) = No Change of Placement

>10 Cumulative Days (Pattern) = Change in Placement

>10 Consecutive Days = Change of Placement

Removals: A Quick Refresher

- Beginning on 11th day of removal during term of “Type 3” and “Type 4” removals, district must provide:
 - Services to enable student to continue to participate in general education curriculum, although in another setting
 - Services to enable student to progress toward meeting IEP goals; and
 - Functional behavioral assessment (“FBA”) and behavioral intervention services, as appropriate, designed to address behavior violation so that it does not recur

(34 C.F.R. § 300.530(d)(1)-(2); 34 C.F.R. § 300.530(d)(5))

Removals: A Quick Refresher

- Districts must hold MD review each time that student's removal constitutes change of placement, even in cases where the removal is made for violation of 34 C.F.R. § 300.530(g) (unilateral removals to IAES for up to 45 days for weapons, drugs or serious bodily injury)

(Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (OSEP 2022) 81 IDELR 138)

Case Example

Ukiah Unified School District (OAH 2026)

- Second-grade Student was suspended for two days for throwing cushion at his teacher
- Parent immediately requested MD review, which District denied
- Parent requested IEP team meeting, but objected when District advised that meeting was not to be MD meeting
- Parent claimed District was obligated to hold MD review on Parent's request, even though special education director explained that two-day removal did not trigger MD obligation
- ALJ ruled in District's favor, agreeing that removal was not change of placement and stating that law does not require convening MD review merely because parent asked for one
- “[D]istrict thoroughly acknowledged and documented Parent’s many, many requests for [an MD review]” and provided PWN in “abundance of caution”

(Student v. Ukiah Unif. School Dist. (OAH 2026) Case No. 2026040469, 126 LRP 18173)

Practice Pointer: Counting Days

- While it is important to keep accurate count of days that student is removed from school for disciplinary reasons, it is also important to recognize that some removals are not “disciplinary actions” and, therefore, do not count toward 10-day threshold that might trigger change of placement
 - Example: Removals of 11-year-old student from his classroom for counseling, a threat assessment, de-escalation of his behavior and participation in statewide assessments were not “disciplinary actions”

(Student v. Capistrano Unif. School Dist. and Journey Charter School (OAH 2014) Case No. 2014060007, 114 LRP 38670)

Practice Pointer: Nondisciplinary Removals

- On the other hand, change of placement resulting from a violation of student code of conduct does not have to be disciplinary in nature to trigger requirement to conduct MD
 - Example: Referral of middle school Student with ED to alternative school through SARB process after he missed 33 of 42 school days constituted change of placement based on student failing to adhere to code of conduct, thereby triggering obligation to conduct MD

(Student v. Rialto Unif. School Dist. (OAH 2014) Case No. 2014040982, 114 LRP 38497)



Procedural Compliance

Who Conducts the MD?

- District, parent and “relevant members of the child’s IEP team”
- Technically, law creates a separate “MD team,” since it does not require all members of IEP team to be present
- But limited case law interpreting IDEA treats meetings to conduct MDs as essentially IEP team meetings

(34 C.F.R. § 300.530(e)(1); Fitzgerald v. Fairfax County School Bd. (E.D. Va. 2008) 556 F. Supp. 2d 543, 50 IDELR 165)

Who Conducts the MD?

- Remember that all subsequent action following MD review is to be taken by IEP team as a whole
 - If behavior is manifestation of disability, IEP team must make decisions about any program revisions, FBAs or BIPs
 - If behavior is not manifestation of disability, IEP team may have to select appropriate IAES and services during suspension
- Practically, then, districts should consider conducting MD review in connection with IEP team meeting

Practice Pointer: Essential MD Team Members

- As is the case with IEP team meetings, if an essential member of MD team does not participate in MD review, an IDEA procedural violation occurs; accordingly, districts should take all necessary steps to secure the attendance of all relevant staff
 - Example: District denied FAPE by convening MD with general education teacher who was not Student's teacher; although teacher selected by district to participate had some knowledge of Student, she was not an appropriate teacher to attend meeting because she never implemented any portion of Student's IEP, nor was she aware of any information in IEP, except for what she was told about Student's disability

(Student v. Fresno Unif. School Dist. (OAH 2012) Case No. 2012020842, 112 LRP 24578)

When Must MD Meetings Be Held?

- MD must be accomplished no later than 10 school days of decision to change student's placement
- OSEP: IDEA does not require that MD meeting occur when disciplinary removal is being considered; rather, requirement to conduct MD is triggered on date that decision is made to implement removal constituting change of placement

(34 C.F.R. § 300.530(e)(1); Letter to Anonymous (OSEP 2005) 43 IDELR 249)

When Must MD Meetings Be Held?

- Districts often must balance between holding MD meeting on time and making sure parents fully participate
- Doug C. v. Hawaii Department of Education (9th Cir. 2013) stands for proposition that there may be circumstances in which ensuring parental attendance at required IEP team meetings takes precedent over compliance with legal timelines when analyzing the procedural aspects of FAPE
 - Does Doug C. apply to MD reviews as well?

Case Example #1

N.F. v. Antioch Unified School District (N.D. Cal. 2021)

- Student with ADHD, anxiety and XYY syndrome was initially suspended prior to winter break, with suspension lasting through holidays
- After break, student was removed for three more days, triggering requirement to hold MD review on January 18 (10 school days from initial removal in December)
- District allegedly provided one day notice to parents of MD review
- District held MD review without parents, found student's conduct to be manifestation of disability and returned student to prior placement

Case Example #1 (cont'd)

N.F. v. Antioch Unified School District (N.D. Cal. 2021)

- ALJ and District Court both rejected parents' claim that district improperly held MD review without them
- Parents' "lack of presence in the same room as [district] staff . . . did not deprive parents of any meaningful opportunity to participate in the determination of the basis for student's behavior"
- Even if procedural violation occurred, there was no denial of FAPE because results of meeting permitted student to return to classroom

(N.F. v. Antioch Unif. School Dist. (N.D. Cal. 2021) 78 IDELR 257, aff'd, (9th Cir. 2022), 81 IDELR 7)

Case Example #2

Parlier Unified School District (OAH 2016)

- Fifth grade Student with OHI was suspended for a total of 19 days—eight separate suspensions—between October 2015 and May 2016
- District attempted to hold MD review on two separate occasions prior to Student's 11th day of suspension, but, because Parent was not available or did not respond, meetings did not take place
- Ultimately, MD review was held on May 5, 2016, 15 school days after Student's 11th day of suspension

Case Example #2 (cont'd)

Parlier Unified School District (OAH 2016)

- ALJ found that District committed procedural violation by holding May 5, 2016 MD meeting five days late
- However, ALJ excused the violation, noting that Parent did not provide any evidence that the delay was prejudicial
- Citing to Doug C., ALJ stated that “[i]f [District] had to choose between proceeding with the meeting without Parent but meeting the procedural deadline, or including Parent in the meeting and missing the deadline by five days, [District] made the correct choice”

(Student v. Parlier Unif. School Dist. (OAH 2016) Case No. 2016080347, 116 LRP 42284)

Practice Pointer: Decision to Hold Meeting Without Parents?

- Districts should always try to secure parental presence and participation at MD meeting; but they also have IDEA responsibility to hold meeting within 10 school days of student's removal from educational placement for disciplinary reasons
- When parents do not attend meeting, districts must document every attempt to ensure their attendance and also document fully all team conclusions and rationale for subsequent discussion with parents
- Balance the following:
 - Obligation to ensure opportunity for parent participation
 - Provision of FAPE to student

Parental Notice

- For IEP team meetings, IDEA requires that district notify parents early enough to ensure that they will have an opportunity to attend, and must schedule meeting at mutually agreed upon time and place
- While IEP notice rules are not expressly applicable to MD meetings, they “provide guidance in evaluating reasonableness of notice of MD reviews to support meaningful parental participation in the process”
- MD meeting notice must inform parent of decision to change student’s placement and must be accompanied by copy of procedural safeguards

(34 C.F.R. § 300.322(a)(1), (2); Ed. Code, § 56341.5, subds. (a)-(c); Student v. Fresno Unif. School Dist. (OAH 2012) Case No. 2012020842, 112 LRP 24578)

Practice Pointer: MD Meeting Notice

- How much advance notice is enough?
- There is no definitive answer to that question in the law, but districts must provide adequate notice (time and content) to allow parents to be able to attend—and to prepare for—the meeting
 - Example: Because District “wanted to hold the MD team meeting within three school days of the changed placement, instead of within 10 school days as the law allows, District failed to ensure that Parents got the appropriate notice in a timely fashion”

(Student v. Fresno Unif. School Dist. (OAH 2012) Case No. 2012020842,112 LRP 24578)



**MDs for Students
Not Yet Eligible for Special
Education**

MDs for Students Not Yet Eligible for Special Education

- Parent of student who has not been determined to be eligible may assert any IDEA protections—including the requirement to conduct MD review for disciplinary removal resulting in change of placement—in circumstances when district had “knowledge” that student was with a disability before occurrence of behavior that precipitated disciplinary action

(34 C.F.R. § 300.534)

What Constitutes “Knowledge”?

- District deemed to have “knowledge” if:
 - Parent has expressed concern in writing to district supervisory or administrative personnel, or to one of student's teachers, that student needs special education and related services
 - Parent has requested assessment; or
 - Student’s teacher, or other district personnel, has expressed specific concerns about pattern of behavior demonstrated by student, directly to director of special education or to other supervisory personnel

(34 C.F.R. § 300.534)

What Constitutes “Knowledge”?

- Districts are not considered to have “knowledge” if parent has not allowed assessment or has refused services, or if student has been assessed but determined not to be eligible
- If district is not deemed to have “knowledge,” student may be subjected to disciplinary measures applied to students without disabilities who engage in comparable behaviors

(34 C.F.R. § 300.534)

Case Example

Vista Unified School District (OAH 2018)

- Student was placed in group home by juvenile court
- Numerous instances of misconduct (inappropriate touching, profanity, cutting classes, fighting)
- Disruptive incidents culminated in an assault on another student
- District recommended expulsion
- Parents claimed District had basis of knowledge of disability due to Student's pattern of behavior and that District should have conducted MD review

Case Example (cont'd)

Vista Unified School District (OAH 2018)

- ALJ found for District
- No evidence that any staff expressed concern about specific “pattern of behavior”
- Although Student engaged in several different behaviors, there was no consistent behavior or tendencies that amounted to a “pattern”
- Referral to general ed intervention program did not indicate basis of knowledge
- No evidence of any request for assessment

(Student v. Vista Unif. School Dist. (OAH 2018) Case No. 2017111058, 118 LRP 7001)



MDs: *At the Meeting*

Information to Consider

- MD team must consider all “relevant information,” including:
 - Information in student’s file, such as evaluations and diagnostics
 - Student’s IEP and placement
 - Teacher observations
 - Relevant information provided by parent
- For students who have transferred from other districts (either intrastate or interstate), it is essential for MD team to obtain records, particularly concerning behavioral history
 - IDEA requires districts to promptly request student records from student’s former district and requires former district to promptly respond to request

(34 C.F.R. § 300.534; 34 C.F.R. § 300.323(g))

Case Example

Bella Mente Montessori Charter School (OAH 2023)

- 8th-grade Student with ADHD was overheard saying he was going to “bring a gun to school and kill everyone and shoot the teacher's head off”
- Charter School police conducted search of Student's home and found dozens of weapons, list of student names, school's address, and drawings of people with weapons
- Student was suspended and recommended for expulsion
- MD team based its conclusion on school psychologist's report that behavior was not manifestation of disabilities
- Parents contended that Charter School predetermined MD team's findings

Case Example (cont'd)

Bella Mente Montessori Charter School (OAH 2023)

- ALJ agreed with Parents
- Student had only attended Charter School for 41 school days before making threat; Charter School staff had not had time to become familiar with Student's behaviors and how his disabilities might influence them
- School psychologist was not available at MD review to discuss report
- Parents did not have time to offer their information explaining Student's conduct "in the single hour" reserved for MD review
- ALJ: Advocate's sense that meeting was "kind of a fait accompli" [sic] was correct

(Student v. Bella Mente Montessori Charter School (OAH 2023) Case No. 2022110710, 123 LRP 6989)

Practice Pointers: Information to Consider

- Based on the available information, MD team should consider possible existence of other disabilities that might have been cause of conduct at issue
 - Example: ALJ overturned MD team's conclusion that Student's conduct (assaulting his girlfriend) was not manifestation of his hearing impairment or his ADHD because team failed to consider all relevant information in finding that Student's conduct was not manifestation of his disabilities, including Student's recent bipolar diagnosis and suicidal ideations

(Student v. Roseville Joint Union High School Dist. (OAH 2013) Case No. 2013080664, 113 LRP 44610)

Practice Pointers: Information to Consider

- It is essential to making correct MD decision that all information presented to team for consideration is accurate; relying on statement of only one witness about incident at issue, without corroboration, can sometimes be problematic
 - Example: Reliance on witness's statement that Student was involved in multiple drug sales proved to be inaccurate and led to ALJ's decision overturning MD team's determination that Student's conduct was not manifestation of his ADHD

(Student v. San Diego Unif. School Dist. (OAH 2009) Case No. 2009060881, 52 IDELR 301)

Questions to Answer

- MD team is required to find that student's conduct giving rise to change in placement is manifestation of his or her disability if conduct at issue either:
 - Was caused by, or had a direct and substantial relationship to, student's disability; or
 - Was direct result of district's failure to implement IEP

(34 C.F.R. § 300.530(e)(1))

1. Was Conduct Caused By—Or Did Conduct Have Direct and Substantial Relationship to—Student's Disability?

- Ask:
 - What is the disability?
 - How does disability affect the student?
 - What are facts of disciplinary incident?

1. Was Conduct Caused By—Or Did Conduct Have Direct and Substantial Relationship to—Student's Disability?

- Remember:
 - Consider how severe disability is for that student
 - Blanket decisions based on characteristics generally exhibited by other students with same disability are prohibited
 - MDs are not simple analysis of right or wrong
 - Direct causal relationship between behavior and disability must be established
 - When several factors contribute to misconduct, but disability is contributing factor, relationship between disability and misconduct is established

2. Was Conduct Direct Result of District's Failure to Implement Student's IEP?

- Ask:
 - What is the disability?
 - How does the disability affect student?
 - Was IEP being fully implemented?
 - If not, what portions were not being implemented?
 - What are facts of disciplinary incident?

2. Was Conduct Direct Result of District's Failure to Implement Student's IEP?

- Remember:
 - Examine any portions of IEP that were not implemented with fidelity
 - Analyze facts and effects of not implementing IEP to determine whether there was direct causal relationship between behavior and failure to implement

Case Example #1

Capistrano Unified School District (OAH 2026)

- Middle-school Student with ADHD was suspended (and later recommended for expulsion) after violently assaulting another student (“Student A”)
- Two days before assault, Student was upset that Student A told other students that Student had stolen his bike helmet; Student told Student A he was going to “beat him up” if he did not stop calling Student “a thief”
- On day of assault, Student waited for Student A and told other students about impending fight
- At time of incident, District was in process of conducting FBA to assess and address Student’s off-task behavior, including impulsivity and attention span
- District conducted MD review, finding no relation between incident and Student’s ADHD
- Parents challenged MD team’s findings

Case Example #1 (cont'd)

Capistrano Unified School District (OAH 2026)

- ALJ found for District
 - Student's attack on Student A was intentional act planned over course of two days, and assault was not result of distraction or impulsive behavior
 - School psychologist persuasively testified that Student's attention and executive functioning needs presented at school as task avoidance and difficulties with work completion, not planning and carrying out fights
 - School nurse: Recent change in medication would not cause behavioral changes
 - No evidence that Student's conduct was direct result of failure to implement IEP; whether District should have offered Student BIP earlier was not relevant to question
 - No evidence that MD team predetermined its findings merely because assistant principal had recommended expulsion, since expulsion and MD involved different decision-makers, took place at different times, and required different inquiries

(Student v. Capistrano Unif. School Dist. (OAH 2026) Case No. 2026010230, 126 LRP 5134)

Case Example #2

Atascadero Unified School District (OAH 2025)

- 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

Case Example #2 (cont'd)

Atascadero Unified School District (OAH 2025)

- ALJ overturned MD team's finding, ruling that evidence supported 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 Unif. School Dist. (OAH 2025) Case No. 2025010625, 125 LRP 9765)

Case Example #3

Kern High School District (OAH 2024)

- 10th-grade Student, eligible under OHI (ADHD), also had medical diagnosis of autism
- Student was suspended for making terrorist threat against school officials or school property
 - At end of baseball practice, Student accessed teammate's backpack, using teammate's cellphone to call 911 to report active shooter at neighboring high school
 - Police report concluded that two student witnesses observed Student removing cellphone from his teammate's bag and making the call
- Subsequent MD review concluded that Student's conduct was not caused by or had a direct or substantial relationship to Student's disability

Case Example #3 (cont'd)

Kern High School District (OAH 2024)

- ALJ upheld MD team's conclusion
 - Parents provided no evidence that District failed to consider any recent mental health changes, hospitalizations, periods of emotional and behavioral dysregulation, or new diagnosis made through Student's personal medical providers
 - ALJ rejected Parents' assertion that some peers thought his behavior was a joke
 - Calculated behavior had "nothing more than an attenuated relationship to his [ADHD]"
 - Student' mental health clinician also credibly testified that opportunistic nature of Student's actions were inconsistent with behaviors expected of someone with autism
 - District, including baseball coach, appropriately implemented IEP and BIP, which called for maintaining supervision of Student

(Student v. Kern High School Dist. (OAH 2024) Case No. 2024060613, 124 LRP 29282)

Case Example #4

Santa Paula Unified School District (OAH 2020)

- Student with SLD had history of aggressive behaviors
- IEP team developed social-emotional goal and offered 30 minutes of weekly counseling
- Student was suspended for participating in physical altercations, vaping, and assaulting/injuring another student
- District proposed expulsion
- MD team determined Student's conduct was not caused by, and did not have direct and substantial relationship to, her disability

Case Example #4 (cont'd)

Santa Paula Unified School District (OAH 2020)

- ALJ overturned MD team's finding
- No evidence that team ever considered question of whether Student's conduct was direct result of failure to implement Student's IEP; there was no reference to any such discussions in MD report
- Evidence established that individual counseling services were not being implemented between time Student enrolled in District and incident
- ALJ also found that IEP team incorrectly concluded that conduct for which Student's expulsion was not related to Student's disability
- Student's disability included diagnosed social emotional dysfunction that manifested in altercations with classmates; District improperly used Student's SLD identification "to circumvent a determination of whether her known social emotional dysfunction manifested in the assault for which she was being disciplined"

(Student v. Santa Paula Unif. School Dist. (OAH 2020) Case No. 2020050048, 77 IDELR 85)

Practice Pointer: “Snapshot” Rule

- ALJs will review the determinations of IEP team in light of what was objectively reasonable given information possessed by team at time of meeting
- OAH has stated “it makes sense to apply the [Adams snapshot] rule” to MDs
- Therefore, MD team’s findings should not be called into question based on subsequent events or new information that may come to light

(Adams v. State of Oregon (9th Cir. 1999) 195 F.3d 1141; Student v. High Tech Middle North County (OAH 2014) Case No. 2014080899, 114 LRP 53441)

Practice Pointer: IEP Implementation

- When several factors contribute to student's misconduct, even if only one factor is failure to implement IEP, relationship between student's disability and misconduct is established
- Importance of fully implementing student's IEP and providing all services determined necessary for FAPE cannot be understated

Documenting the Meeting

- At minimum, it is essential to document the following items in any MD review:
 - When team convened
 - Who was present and whether parents attended
 - What conduct was at issue
 - What decision was made
 - What information team relied upon in making decision
- Failure to document these items can lead to due process order requiring MD be repeated



MDs: *After the Meeting*

If Behavior Is Manifestation of Disability

- If MD team concludes that conduct is manifestation of student's disability, IEP team must:
 - Conduct FBA (unless FBA already conducted), and implement BIP (or if BIP has already been developed, review it and modify it, as necessary)
 - Return student to placement from which student was removed, unless IEP team agrees to change of placement as part of modification of BIP
 - Take immediate steps to remedy IEP implementation deficiencies, if needed
- Law provides no instruction on how soon district must return student to placement from which student was removed, but IEP teams should be aware that failure to do so as quickly as possible can possibly result in denial of FAPE

(34 C.F.R. § 300.530(e)(f))

Practice Pointer: How Soon Is Now?

- Law provides no instruction on how soon district must return student to placement from which student was removed, but IEP teams should be aware that failure to do so as quickly as possible (usually the following school day) can possibly result in denial of FAPE
 - Example: District committed procedural violation by not returning Student to his placement until five days after it had found that Student's conduct was manifestation of his disability; however, such violation did not rise to level of denial of FAPE because Student continued to receive benefit of his ABA home program and did not lose significant instructional time

(Student v. Bellflower Unified School Dist. and Bellflower Unif. School Dist. v. Student (OAH 2013) Case Nos. 2012060009 and 2012060628, 113 LRP 13663, aff'd, (C.D. Cal. 2014) 63 IDELR 4)

If Behavior Is Not Manifestation of Disability

- If MD team concludes that conduct is not manifestation of student's disability:
 - Student is subject to same sanctions for misconduct as nondisabled students
 - Student must continue to receive FAPE
 - IEP team should take steps to address student's behavior

(34 C.F.R. § 300.530(e),(f); 71 Fed. Reg. 46721 (Aug. 14, 2006))

Right to Challenge MD Findings

- Parents who disagree with any decision regarding MD may request expedited due process hearing
- OAH will schedule hearing within 20 school days of date complaint was filed
- ALJ must make finding within 10 school days after hearing
- Resolution meeting must occur within seven days of receiving notice of due process complaint unless parents agree otherwise
- Time limit does not apply if parties agreed to mediation

(34 C.F.R. § 300.532)

Take Aways . . .

- To reach sound decisions and avoid unnecessary conflicts, it is essential that relevant staff be trained and aware of important fundamentals of the MD process
- Districts need to ensure that MD review is meaningful, which will require that MD team have comprehensive understanding of student and student's disabilities
- Communication with parents throughout MD process is vital, but if parents object to team's findings, team should remind them of their options to challenge decision

Legal Update



Recent OAH Decisions

Assessments/IEEs

San Benito High School District

Facts:

- District's assessments found Student eligible for special education with autism and ID
- Parents disagreed with several of District's assessments and sought IEEs
- When Parents did not identify their proposed independent assessors, District provided SELPA criteria, which included list of pre-approved examiners for the IEEs in various disciplines
- On November 4, 2025, Parents informed District that they wanted to choose their own independent assessors and were not interested in SELPA's list
- On November 12, 2025, special education director wrote Parents, stating that District was ready to begin IEE funding
- Parents provided list of their selected assessors, but District was unsuccessful in attempts to contact them because they were either located out-of-state or could not be found
- Parents provided new list, but those assessors were located over 300 miles from District, which did not comply with SELPA's required 100-mile radius

Assessments/IEEs

San Benito High School District

Facts (cont'd):

- District's special education director informed Parents that their newly proposed assessors exceeded 100-mile SELPA limit
- District notified Parents that parties were at impasse and District was not able to fund IEEs
- Parents filed request for due process hearing on January 28, 2026, alleging District failed to timely fund IEEs requested by Parents or, alternatively, did not timely file due process request with OAH to defend its October 2025 triennial assessments after Parents requested IEEs on October 30, 2025
- Parents claimed that District's delay in deciding to file due process hearing request was contrary to its duty to "fund or file," without unnecessary delay
- Subsequently, District filed for due process hearing on February 5, 2026, seeking to demonstrate that its triennial assessments and its vision and hearing screening were legally compliant, such that it need not fund an IEE in areas assessed

Assessments/IEEs

San Benito High School District

Decision:

- ALJ rejected Parents' allegations concerning IEE obligation to "fund or file"
 - "[District] agreed to fund Parents' requested IEEs. And [District] would have done so, except for Parents' noncooperation."
 - District did not delay; it chose to fund IEEs within a few days of Parents' request
 - Parents wrongly viewed the SELPA list and District's requests as improper attempts to interfere with their right to choose an independent evaluator
 - "[T]his is not a situation where a school district simply failed to respond to a parental request for an IEE"
 - Having exhausted all means of obtaining proposed IEE evaluators who could be properly validated to conduct IEEs, District then filed its due process request to defend its assessments

Assessments/IEEs

San Benito High School District

Decision (cont'd):

- ALJ then determined District's October 2025 psychoeducational multidisciplinary triennial evaluation; speech, language, and communication assessments; OT assessment and vision and hearing screen were procedurally and substantively appropriate
 - School psychologist reviewed Student's cognitive abilities, academic capabilities, autism ratings, and adaptive functioning skills; then used the psychoeducational results to analyze Student's eligibility, applying appropriate regulatory definitions
 - Speech-language pathologist evaluated Student's articulation and voice, and analyzed speech samples gathered during informal language sampling and conversational speech to determine Student's needs
 - OT therapist concluded that Student's current support for sensory processing needed to continue
 - Vision and hearing screenings produced valid and reliable results, indicating that Student did not require referral for further assessment
- Accordingly, District did not have to fund IEEs in areas requested by Parents

(Student v. San Benito High School Dist. and San Benito High School Dist. v. Student (OAH 2026) Case Nos. 2026011066 and 2026020339, 126 LRP 11807)

IEEs

Why Does This Case Matter to Us?

- Districts are legally required to ensure that Parents' proposed IEE evaluators meet same requirements with which school district assessors would need to comply
 - Here, District could not do so because proposed IEE assessors could not be found
- Districts also are entitled to set reasonable limits as to IEE assessor's location
 - In this case, ALJ determined that SELPA's IEE criteria's 100-mile limit was reasonable geographic radius and was not so narrow as to interfere with Parents' right to obtain independent evaluator
- Districts' reasonable IEE criteria is enforceable unless the parents can demonstrate unique circumstances justify departure from criteria
 - Parents could not do so here, failing to show that assessors from other states or from Southern California were essential to provide IEEs they requested

Child Find/Offer of FAPE

Newport Mesa Unified School District

Facts:

- Student attended fourth and fifth grades in District elementary school
- Fourth grade teacher noted Student had trouble relating to peers and was disorganized; fifth grade teacher expressed concerns in email to Parent in October 2023
- Upon receipt of neuropsychologist's report, teacher referred Student to District's SST team
- By summer 2024, Parents had become frustrated with District's slow progress and privately placed Student at Fusion Academy
- Student was found eligible under autism and SLI categories on September 6, 2024
- IEP offered placement in District's elementary school, but Parents refused to consent; Parents also refused consent to other proposed IEPs in February 2025 and April 2025
- Seeking reimbursement for private placement at Fusion, Parents claimed child find violation and asserted that District's IEPs failed to offer FAPE to Student

Child Find/Offer of FAPE

Newport Mesa Unified School District

Decision:

- ALJ determined District committed child find violation, but such violation did not deny FAPE
 - At least by such time as fifth-grade teacher expressed concerns via email in October 2023, District had ample reason to suspect Student had disability
 - Failure to refer reflected District's long-standing policy of exhausting all general education interventions before referring student for special education assessment
 - District also mistakenly believed that need for assessment must first be presented to SST team
 - But child find violation did not deny FAPE since there was no showing prior to September 6, 2024 that Student would have been eligible for special education before that date

Child Find/Offer of FAPE

Newport Mesa Unified School District

Decision (cont'd):

- ALJ, however, found that IEPs proposed by District did not offer FAPE and awarded Parents over \$100,000 of tuition reimbursement for their placement at Fusion Academy
 - District's goals were not based on Student's present levels of performance at Fusion, which District had difficulty obtaining
 - Goals did not show direct relationship between present levels, goals, and educational services to be provided
 - Some goals included various numerical values that had no apparent source
 - Other goals contained statement that District would add additional baselines within 30 days of Student's return to public school
 - Incomplete goals also violated requirement of Union v. Smith that IEP offer must be clear and understandable to parents

(Student v. Newport Mesa Unif. School Dist. (OAH 2026) Case No. 2025071064, 126 LRP 3083)

Offer of FAPE

Why Does This Case Matter to Us?

- Annual goals are heart of IEPs
- Ninth Circuit described progress on annual goals as “the correct standard for measuring educational benefit under the IDEA” (County of San Diego v. Special Educ. Hearing Office (9th Cir. 1996) 24 IDELR 756)
- Without measurable goals, that progress and accompanying educational benefit cannot be determined
- In addition, California special education regulations require direct relationship between present levels of performance, goals, and educational services to be provided (Cal. Code Regs., tit. 5, § 3040(b))
- This relationship was lacking in IEPs developed by District in this case

Disciplinary Removals

Glendale Unified School District

Facts:

- During 2025-2026 school year, 6-year-old Student attended three different Spanish dual-language immersion classrooms in District, and experienced behavioral challenges in each
- Student changed classrooms at Edison Elementary after Parent complained about his teacher
- Further complaints resulted in move to John Muir Elementary
- At Edison, Student frequently eloped from class and on one occasion left early accompanied by his brother
- Student was suspended for one day for “force/violence on others”; on return from suspension, Student left early with Parent
- At John Muir, Student’s elopement behavior continued
- During elopement episodes at both schools, staff accompanied Student for safety

Disciplinary Removals

Glendale Unified School District

Facts (cont'd):

- Student was disenrolled from District from November 2025 through February 2026 over residency dispute
- Parent contended that District failed to provide IDEA procedural protections (including MD review) because Student experienced a pattern of disciplinary removals exceeding 10 school days during 2025-2026
- Parent claimed Student's frequently being out of class in connection with his behavior, as well as experiencing teacher changes, school change, and disenrollment, all constituted disciplinary removals
- District asserted that Student's teacher changes, school change, and disenrollment were result of Parent's preference and lack of residency, not school discipline

Disciplinary Removals

Glendale Unified School District

Decision

- After 10-day hearing, ALJ found for District on all counts
- Parent only established that Student experienced, at most, one day of school disciplinary removal during 2025-2026 school year; even if early releases were considered “removals,” aggregate still would have been well under 10-day threshold to trigger IDEA protections
- Student's elopement was not formal or informal disciplinary removal because District did not remove Student due to violations of code of student conduct; instead, Student was outside of school because he left class when he eloped
- Transfer of school sites and teacher changes were not result of Student's conduct but based on Parent's complaints; as such they did not constitute informal disciplinary removals
- Student's disenrollment from District for four-month period also was not disciplinary change of placement but was result of residency dispute between Parent and District

(Student v. Glendale Unif. School Dist. (OAH 2026) Case No. 2025120710, 126 LRP 5132)

Disciplinary Removals

Why Does This Case Matter to Us?

- Informal removal, although not defined by IDEA, means action taken by school personnel in response to student's behavior that excludes student for part or all of the school day, or even an indefinite period of time; it can include administratively shortened school days when student's school day is reduced by school personnel, outside of IEP team and placement process, in response to student's behavior
- These exclusions are considered informal because school removes student with a disability from class or school without invoking IDEA's disciplinary procedures
- Informal removals are subject to IDEA's requirements to same extent as disciplinary removals by school personnel using school's disciplinary procedures
- What constitutes a disciplinary "removal" or "a pattern" is frequently litigated issue; although, in this case, even assuming Parent had prevailed on all contentions (except disenrollment issue), removals fell far short of 10-day threshold

Graduation

Sonoma Valley Unified School District

Facts:

- At IEP team meeting in May 2024 for high-school Student with autism and SLI, IEP team determined that Student would graduate with regular diploma and be exited from special ed
- Student had received passing grades in all her course and progressed on all goals
- School psychologist believed that Student demonstrated her ability to learn in classroom with services and supports provided in her IEP, as reflected in her grades, teacher reports, and progress on IEP goals
- Parent did not agree with decision to graduate Student
- Parent claimed that Student failed to meet District's requirements for regular high school diploma, that District relied only on Student's grades and did not consider that Student consistently received failing scores on standardized tests, and that District denied Student FAPE by terminating her special education and related services

Graduation

Sonoma Valley Unified School District

Decision:

- ALJ found in favor of District
 - Student was not required to take courses in living skills and geometry to obtain diploma
 - Student's achievement on state standardized testing was not by itself determinative of Student's ability to earn regular high school diploma
 - Student's high school transcript reflected that she earned more than minimum credits required and completed all state-required courses necessary to graduate
 - No persuasive testimony or documentary evidence suggested Student's coursework was modified or her grades improperly inflated, as Parent alleged
 - Once Student met District's general education requirements at end of the 2023-2024 school year, District was required to award Student regular high school diploma
 - Parent provided no evidence that District was obligated to continue to offer special education services following award of diploma

(Student v. Sonoma Valley Unif. School Dist. (OAH 2026) Case No. 2025090701, 126 LRP 5128)

Graduation

Why Does This Case Matter to Us?

- Establishment of proficiency standards for high school diploma is state function that is not addressed by IDEA
- State law and school district policy exclusively determine diploma and graduation requirements
- California regulations require that when student with disability meets district requirements for completion of prescribed course of study designated in student's IEP, district must award diploma
- IDEA does not require student to achieve all IEP goals before being eligible to graduate with regular high school diploma

IEP Implementation

Alhambra Unified School District

Facts:

- April 2022 IEP for Student with autism was last IEP to which Parent had consented
- Student was placed in general education classroom and IEP offered both push-in and pull-out services for SAI
- Student continued to received services under April 2022 IEP during seventh, eighth and ninth grade
- Parents claimed District failed to implement Student's IEP, asserting that:
 - Pull-out SAI was not based only on Student's class assignments, as called for by IEP
 - Some essays Student wrote for her pull-out SAI were typed rather than handwritten
 - SAI assignments in reading, writing, and math were not at grade level
 - SAI was implemented using a goal to which Parent had not consented
 - Student did not receive the correct number of SAI minutes, or correct amount of counseling or group speech services

IEP Implementation

Alhambra Unified School District

Decision:

- ALJ rejected all of Parent's claims, finding no material failure to implement Student's IEP
 - Parent failed to offer evidence establishing that SAI assignments were intended to be focused only on Student's classwork assignments, as IEP did not limit SAI assignments to specific assignments from Student's general education class
 - Parent offered no evidence that occasionally typing assignments resulted in work that was not in conformity with skills of developing written essays, based on Student's changing status
 - No evidence that District failed to provide grade-level SAI assignments required by IEP
 - Parent could not identify any implementation of incorrect goals
 - Parent could not identify total hours of SAI that Student received (push-in vs. pull-out) and, as such, could not specify any failure to receive services
 - Any missed counseling sessions did not amount to material failure to implement IEP

(Student v. Alhambra Unif. School Dist. (OAH 2026) Case No. 2025101049, 126 LRP 11793)

IEP Implementation

Why Does This Case Matter to Us?

- Only material failure to implement IEP violates IDEA
- Material failure occurs when there is more than “a minor discrepancy” between the services school provides to student and services required by student’s IEP
- Special education and related services need only be provided “in conformity with” IEP, and Ninth Circuit has interpreted this language to mean there is no statutory requirement of perfect adherence to IEP, nor any reason rooted in statutory text to view minor implementation failures as denials of FAPE
- Further, courts have acknowledged that materiality standard allows for changes in how older IEP is implemented as student progresses from elementary school to middle school, and to high school, so long as services provided approximate Student’s old IEP as closely as possible

IAES

Rocklin Academy Family of Schools

Facts:

- 10-year-old Student with OHI (ADHD) had history of behavior issues in elementary school
- Student's behavior began to improve once Parent consented to portions of IEP (including individual counseling and behavioral intervention services)
- Nonetheless, District sought removal of Student to 45-day IAES based on:
 - FBA that observed Student engaging in one “Level 3” high-intensity behavior episode
 - One-day suspension for making “guttural noises” resulting in getting saliva on other students' faces
 - Pointing hand sanitizer spray bottle at other students
 - Throwing classroom items and banging on walls
 - Slamming Chromebook on teacher's fingers
- As IAES, District proposed same general education classroom at elementary school
- Parents believed District's complaints about behavior stemmed from dispute over need for 1:1 aide

IAES

Rocklin Academy Family of Schools

Decision:

- ALJ: District failed to prove that Student's behaviors rose to level that justified removal to IAES
 - FBA observations only reflected single incident of high intensity behavior and behavior specialist's report was made in "broad and general terms"
 - Teacher explained in the teacher input section of FBA that behaviors Student exhibited in classroom (banging on walls, etc.) were generally "low intensity"
 - Incidents of Student making "guttural noises" had ceased; pointing hand sanitizer spray bottle was documented as "minor incident"; and slamming Chromebook on teacher's fingers did not justify IAES
 - Student's behavior had improved following implementation of behavior interventions
 - Alleged risk of "emotional harm or discomfort" was not legally relevant
 - Even if District demonstrated Student's behaviors warranted IAES, District's proposed IAES in same classroom was not "alternative setting"

(Rocklin Academy Family of Schools v. Student (OAH 2026) Case No. 2026010984, 126 LRP 11805)

IAES

Why Does This Case Matter to Us?

- District may request due process hearing to authorize change of placement to IAES if district believes that maintaining current placement of student is substantially likely to result in injury to student, or to others
- ALJ pointed out that previous OAH decisions provide examples of significant and serious behaviors needed to authorize removal to IAES, which include kicking and hitting staff and peers, eloping from campus, threatening to bring firearm to school and self-injurious behaviors
- Student's behaviors in this case did not approach such levels

LRE Analysis

Coastal Academy Charter School

Facts:

- 18-year-old high school Student with ID (Down syndrome) and SLI had academic skill levels ranging between kindergarten to first grade and limited communication skills
- Charter School's May 2024 IEP placed Student in general ed for 85 percent of school day
- In January 2025, Charter School proposed to change Student's placement to Pathfinder Program Functional Academics and Functional Life Skills classes, which was in separate classroom outside general education setting, providing instruction in English language arts, math, social studies, and science, using modified curriculum, to students with IEPs
- New placement, with increased SAI, was offered for remainder of 2024-2025 school year for biology and for all core academic courses in 2025-2026 school year
- Parents refused to consent to proposed IEP, contending that new placement was not LRE; Charter School believed Student could not receive meaningful benefit from gen ed classes

LRE Analysis

Coastal Academy Charter School

Decision:

- ALJ determined that Charter School denied Student FAPE, finding that, under four-factor Rachel H. analysis, placement in general education biology class for 2024-2025 was LRE
- First factor: Student received academic benefit from his general education biology course, and participation in class did not impede his ability to make progress on IEP goals
 - Although Student's IEP goals were not directly related to biology class, Student had made progress toward (or had met) his four reading goals and his two writing goals
 - Charter School also had “unrealistic expectations” of Student in biology class
 - “[Charter School's] concerns about Student's access to the biology curriculum were misplaced because they misunderstood the appropriate learning expectations of Student within the class”
 - Charter School's teachers lacked experience in modifying grade-level curriculum to Student's instructional level

LRE Analysis

Coastal Academy Charter School

Decision (cont'd):

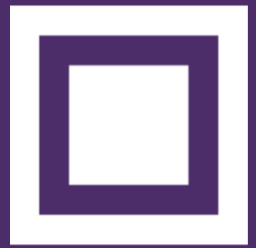
- Second factor: Student received nonacademic benefits from interacting with nondisabled peers in general education classroom
 - Although Student had fewer peer interactions in his biology class, “it was primarily due to his limited communication skills and not because of a lack of interest in connecting with his non-disabled peers”
 - Student’s biology teacher testified Student appeared happy in his class and would smile and wave at his classmates
- Third factor: Student had no problem behaviors that interfered with lessons and learning of his peers
- Fourth factor: No evidence presented concerning costs

(Student v. Coastal Academy Charter School (OAH 2026) Case No. 2025090092, 126 LRP 9227)

LRE Analysis

Why Does This Case Matter to Us?

- In finding that Charter School's offer of FAPE was not LRE for Student, ALJ relied heavily upon interpretation of Rachel H. set forth in D.R. v. Redondo Beach Unified School District (9th Cir. 2022) that appropriate benchmark for measuring academic benefits of student with developmental disabilities is progress toward meeting the academic goals established in student's IEP, and not grade-level performance
- Also relying on Redondo Beach decision, ALJ noted that whether student receives academic benefit in general classroom as result of supplemental aids and services or as result of significant curricular modifications is irrelevant to analysis of first Rachel H. factor



Noteworthy Decisions from the Courts

FAPE Obligation

L.B. v. San Diego Unified School District

Facts:

- Middle-school Student with history of serious mental health diagnoses and hospitalizations was placed by Parents in RTC in November 2019
- In December 2019, District offered Student placement in public school offering intensive mental health services, to which Parents agreed pursuant to settlement agreement
- When school closed during COVID, Student struggled with virtual instruction in District's placement
- Parents removed Student and placed him in RTC in North Carolina (and subsequently in another RTC in South Carolina)
- Parents requested IEP team meeting after learning Student would be disenrolled from District
- After additional IEP team meetings, Parents requested District fund RTC placement, which District refused

FAPE Obligation

L.B. v. San Diego Unified School District

Facts (cont'd):

- IEP team met twice in November 2020
- District advised it would be disenrolling Student
- In March 2021, Parents again requested IEP team meeting to request District reconsider decision not to fund RTC and submitted IEE recommending “therapeutic boarding environment”
- IEP team reviewed IEE in April 2021, and Parents agreed to assessment of Student at South Carolina RTC, which took place over summer of 2021
- District’s updated IEP in November 2021 offered Student placement at another school for students with disabilities, Marcy-Adolescent Day Treatment (“Marcy Day”)
- Parents consented to new proposed IEP, and Student returned to District to attend Marcy Day

FAPE Obligation

L.B. v. San Diego Unified School District

Decision:

- In August 2022, Parents filed due process complaint seeking full reimbursement from District for tuition and other costs associated with their residential placements
- ALJ did not reach the question of whether District failed to offer Student FAPE while he was privately placed because District had “no duty” to offer Student FAPE during that time
- ALJ reasoned that Parents had not “expressly requested an IEP” during this period as required by Capistrano Unified School District v. S.W. (9th Cir. 2021)
- ALJ determined that Parents’ meetings and communications with District were for purposes other than requesting IEP, such as disenrolling Student from District so that he would not receive failing grades
- District court affirmed ALJ’s decision, finding that Parents had requested IEP “meetings” but not IEP “document,” and thus District had no obligation to prepare IEP or offer FAPE, although it did so

FAPE Obligation

L.B. v. San Diego Unified School District

Decision (cont'd):

- Ninth Circuit overturned lower court's decision, holding that District was obligated to offer Student FAPE "during the entire time at issue"
 - District court's decision "rested upon a misreading" of Capistrano
 - Unlike Capistrano, Parents in this case requested numerous IEP team meetings, participated in IEP process, and District, together with Parents, created IEP that purported to offer FAPE
 - Given that district court found that District was not obligated to offer or provide Student with FAPE when Student was at RTCs, it did not consider, on merits, whether District's IEP offered FAPE during 2020-2021 while Student was privately placed
 - Ninth Circuit returned case to lower court to determine whether District's offer constituted FAPE and, if not, whether Parents' private placements were appropriate to warrant reimbursement award

(L.B. v. San Diego Unif. School Dist. (9th Cir. 2026) 126 LRP 5010)

FAPE Obligation

Why Does This Case Matter to Us?

- 9th Circuit took pains to distinguish this case from its decision in Capistrano, referring to Capistrano decision as based on “an unusual series of events”
- While court noted that, under Capistrano, districts only have to develop IEPs for parentally placed private school students with disabilities upon request, Capistrano did not address whether there is distinction between parental request to develop IEP and request to convene IEP team meeting
- In addition to stating that district court's distinction between IEP “document” and IEP team meeting “finds no basis in Capistrano,” 9th Circuit stressed that IDEA regulations “demonstrate that the purpose of IEP [team] meetings is to develop and offer an IEP constituting a FAPE to children with disabilities.”

Statute of Limitations

J.R. v. Ventura Unified School District

Facts:

- District initially assessed Student in 2012 while in kindergarten, finding him eligible for SLD
- No assessment for autism in 2012, or in 2015 and 2018 triennials
- 2018 assessment mentioned autism as possibility, but school psychologist concluded that based on Parent reports, school records, observations and current testing, Student did not appear to meet eligibility criteria
- Mother expressed frustration that Student had not made progress since first grade and exhibited behavioral and social deficits
- Student's 2021 triennial indicated "clinically significant" behavior
- Parent asked District about assessing for autism, but school psychologist indicated nothing in assessment indicated need to evaluate in that area
- Parent did not consent to proposed IEP and obtained independent assessment, which diagnosed Student with autism
- Parents filed due process complaint on April 8, 2021

Statute of Limitations

J.R. v. Ventura Unified School District

Decision:

- ALJ found that IDEA's two-year statute of limitations barred Parents' claims predating April 8, 2019
 - ALJ reasoned that District's assessments of Student and IEP team meetings from 2012 to 2019 put Parents on notice of behaviors that Parents argued were indicative of autism
 - Because District informed Parents about all the assessments it conducted, Parents should have known that District had not assessed for autism
 - ALJ concluded that prior to 2019, Parents "knew or should have known about the alleged action that forms the basis of the complaint"
- District court reversed ALJ, finding that District had denied Student FAPE since 2012
 - "Absent an understanding that [Student's] symptoms were symptoms of autism, Parents did not have any reason to disagree with [District]"
 - Even if claims were otherwise barred under the two-year limitations period, statutory exceptions applied because District "recklessly misrepresented [Student's] assessment results" and "withheld information" that prevented Parents from understanding that District had improperly diagnosed him"

Statute of Limitations

J.R. v. Ventura Unified School District

Decision (cont'd):

- Ninth Circuit reversed district court's decision, ruling that Parents' lawsuit against District was untimely as to educational services Student received before April 2019
 - For IDEA claim alleging that district's failure to assess and diagnose student has resulted in alleged denial of FAPE, statute of limitations begins to run when parents know or should know: (1) the fact of district's action or inaction (i.e., the failure to assess and diagnose); and (2) that their child is being denied FAPE (i.e., child's education is inadequate)
 - Ninth Circuit agreed with ALJ that Parents knew or should have known about alleged action that formed basis of their complaint by end of 2018, at latest and, therefore, "[Parents'] claims predating April 8, 2019 are therefore time-barred"
 - Neither of the two exceptions to two-year statute of limitations applied, as Parents produced no evidence that District "intentionally misled" or ""knowingly deceived Parents," nor could they identify any statutorily mandated disclosures that District withheld

(J.R. v. Ventura Unif. School Dist. (9th Cir. 2026) 126 LRP 11225)

Statute of Limitations

Why Does This Case Matter to Us?

- Districts can limit their potential liability for alleged denial of FAPE by showing that parents should have known about such alleged violation earlier
- Documentation is, as in most instances, crucial
- Here, District produced evidence of Parents' approval of each assessment and reassessment plans to demonstrate that they knew about lack of any autism assessments
- That evidence, along with Parents' ongoing concerns about Student's inadequate progress, undermined Parents' argument that Student's 2021 autism diagnosis restarted two-year limitations period.



Recent Guidance

CDE Guidance: Artificial Intelligence

- CDE issued guidance intended to support TK–12 educators in effectively addressing AI within the TK–12 school setting
- “Equitable Access” section of guidance addressed AI in special education
 - AI tools are increasingly used to differentiate instruction, reduce repetitive paperwork, and provide assistive supports that enhance accessibility and equity
 - Speech-to-text applications help students with learning differences or physical disabilities gain independence
 - AI-powered captioning, transcription, and language translation tools remove barriers for multilingual learners and individuals with hearing or visual impairments
 - AI can also generate personalized materials—such as worksheets, quizzes, and reading assignments—tailored to students’ goals, strengths, and interests
- Full guidance can be found at www.cde.ca.gov/ci/pl/aiincalifornia.asp



New Developments Affecting Special Education

Proposed Legislation for 2027

AB 2189—Statewide Special Education Parent Advocacy Collaborative

- Would establish three-year Statewide Education Special Education Parent Advocacy Collaborative administered by State Council on Developmental Disabilities
- Intended to develop coordinated infrastructure that unifies and trains parents on how they can advocate for rights of students with special needs
- Would require State Council to conduct competitive grant process to award \$800,000 annually for 3 fiscal years to a statewide advocacy organization
- Would require selected grantee to conduct outreach and training through meetings or forums to provide information on statewide special education advocacy

Proposed Legislation for 2027

AB 2191—High School Graduation Requirements

- Would require CDE and the California Collaborative for Educational Excellence to establish, on or before July 1, 2027, statewide resource within California system of support focused on helping LEAs develop alternative pathways for a high school diploma for students with disabilities through capacity building within state's system of support, training, and technical assistance

AB 2468—Inclusion of Students with Disabilities in School Accountability

- Would expand the Supporting Inclusive Practices project to improve educational outcomes for students with disabilities
- Would mandate targeted technical assistance and establish demonstration sites to help LEAs integrate students with disabilities into general education settings

Proposed Legislation for 2027

AB 2555—English Learner Reclassification

- Would require, beginning in 2026-27 school year, English learner student to be reclassified as English proficient if student meets the score established by state board for purposes of reclassification on assessment of English language proficiency identified or developed by the Superintendent, or, if applicable, student meets score established by state board for purposes of reclassification on statewide alternate assessment for English language proficiency
- Effective July 1, 2027, would establish new permanent statewide reclassification system that will be consistent with new assessments
- After student is reclassified, AB 2555 would require LEA to ensure that student's instructional program and placement reflects that student is reclassified student and communicate to student's parent or guardian that their child has been reclassified

Proposed Legislation for 2027

SB 685—Nonpublic Schools and Agencies

- Would eliminate the requirement that nonpublic schools or agencies that enter into contracts for the provision of special education services be nonsectarian
- Would:
 - Exclude from tuition or fees such amount attributable to provision of religious instruction
 - Prohibit public funds paid pursuant to those contracts from being used to pay for religious instruction at NPS or NPA
 - Prohibit NPS or NPA from providing religious instruction to student placed by LEA
 - Require applicant seeking initial or renewal certification to certify that all educational services provided under a master contract with LEA are secular, neutral, and respectful regarding religion and religious view
 - Prohibit NPS or NPA, in performing services under master contract, individual service agreement, or IEP, from subjecting any person to discrimination on basis of specified protected characteristics

Proposed Legislation for 2027

SB 685—Nonpublic Schools and Agencies (cont'd)

- Would require application for NPS seeking certification from Superintendent of Public Instruction to include:
 - Assurance that NPS has requested from Commission on Teacher Credentialing a list of all credential holders who have had final adverse action taken against their credential
 - Commencing July 1, 2027, documentation that specified staff and administrators have obtained fingerprint clearance with Commission
 - Commencing January 1, 2028, list of staff providing instruction and services to students in California and copies of their credentials

SB 1381—State Special Schools

- Would require LEAs to provide parents and guardians of students who are deaf or hard of hearing, blind, or visually impaired, or deaf-blind, with information about State Special Schools, including the California School for the Deaf and the California School for the Blind, through annual notifications during IEP process

Proposed Legislation for 2027

SB 1225—Respiratory Services

- Would repeal authorization for licensed vocational nurse, under the supervision of credentialed school nurse, to assist student with disabilities with basic respiratory services authorized by the Respiratory Care Practice Act.
- SB 1225 would instead authorize individuals, if they have qualifications and meet requirements for providing specialized physical health care services to student with disabilities, to provide defined set of basic respiratory services to those individuals

Restructuring of U.S. Department of Education

- In June 2026, USDOE announced several interagency agreements, including agreement to move administration of IDEA to U.S. Department of Health and Human Services (“HHS”)
- USDOE also announced separate interagency agreements to coordinate activities of Office of Civil Rights (“OCR”) and Student Privacy Protection Office (“SPPO”) with U.S. Department of Justice (“DOJ”)
- USDOE will continue to lead OSERS programs and activities and provide technical assistance
- One aspect of restructuring that warrants particular attention is distinction between disability as health issue and disability as educational issue

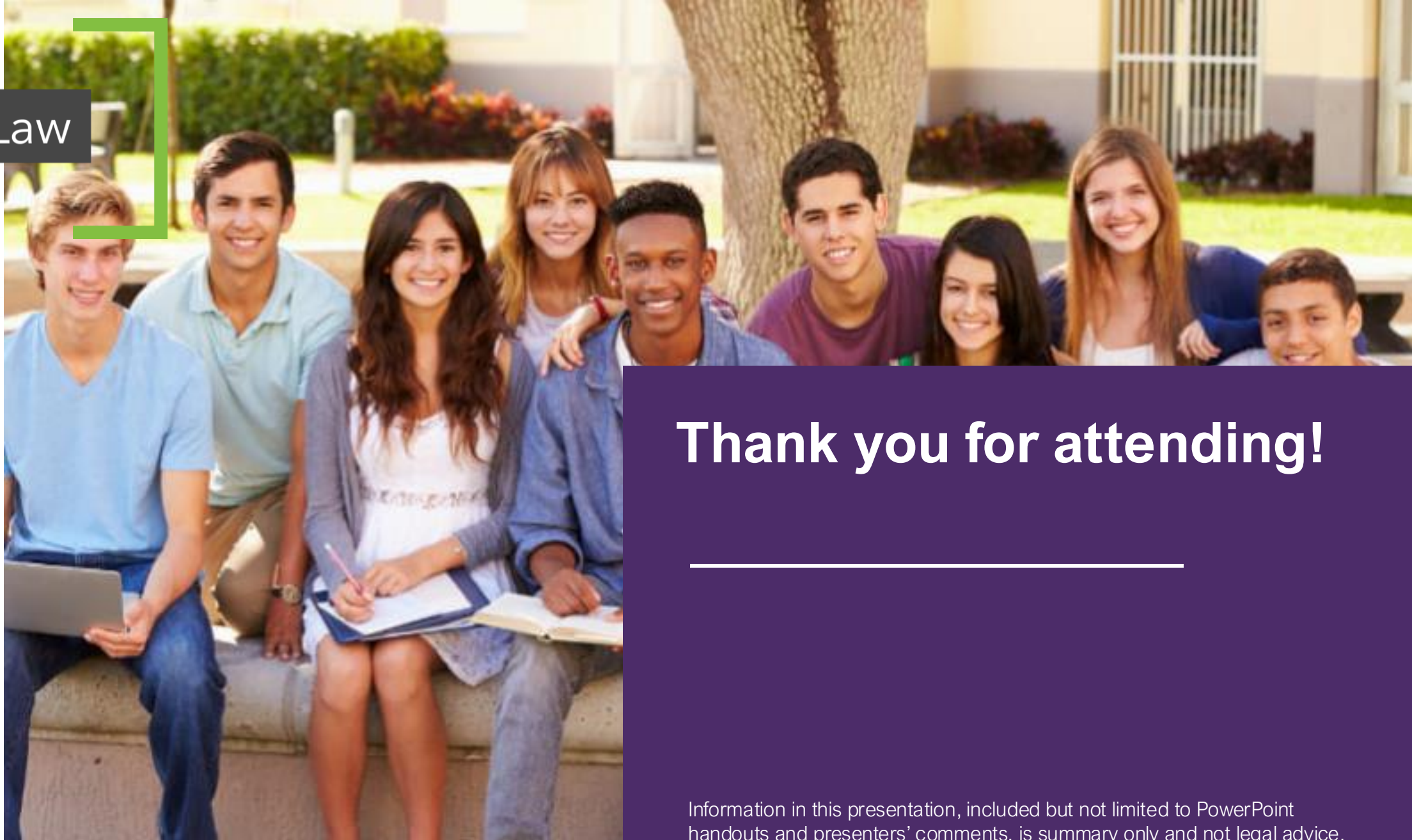
(Fact Sheet: Department of Education and Department of Health and Human Services Special Education and Rehabilitative Services Partnership (USDOE/HHS, June 16, 2026))

Possible Changes to IDEA and FERPA Regs

- In July 2026, Office of Management and Budget released Agency Rule List for 2026, outlining upcoming regulatory activities for federal agencies, including USDOE
- USDOE intends to amend 2016 IDEA regulations that established standard methodologies states must use to determine whether significant disproportionality based on race and ethnicity is occurring in the state and that set specific programmatic requirements on how states are required to comply with IDEA
- USDOE also intends to amend FERPA regulations to clarify definition of education records, along with those regulations governing non-consensual disclosure of personally identifiable information in education records to third parties (including commercial vendors), disclosures in response to law enforcement warrants or judicial subpoenas, and complaint and investigation procedures and remedies that apply to enforcement of FERPA
- Notice of Proposed Rulemaking for IDEA and FERPA is expected in late 2026



F3 Law



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