F3 Law 20 YEARS

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

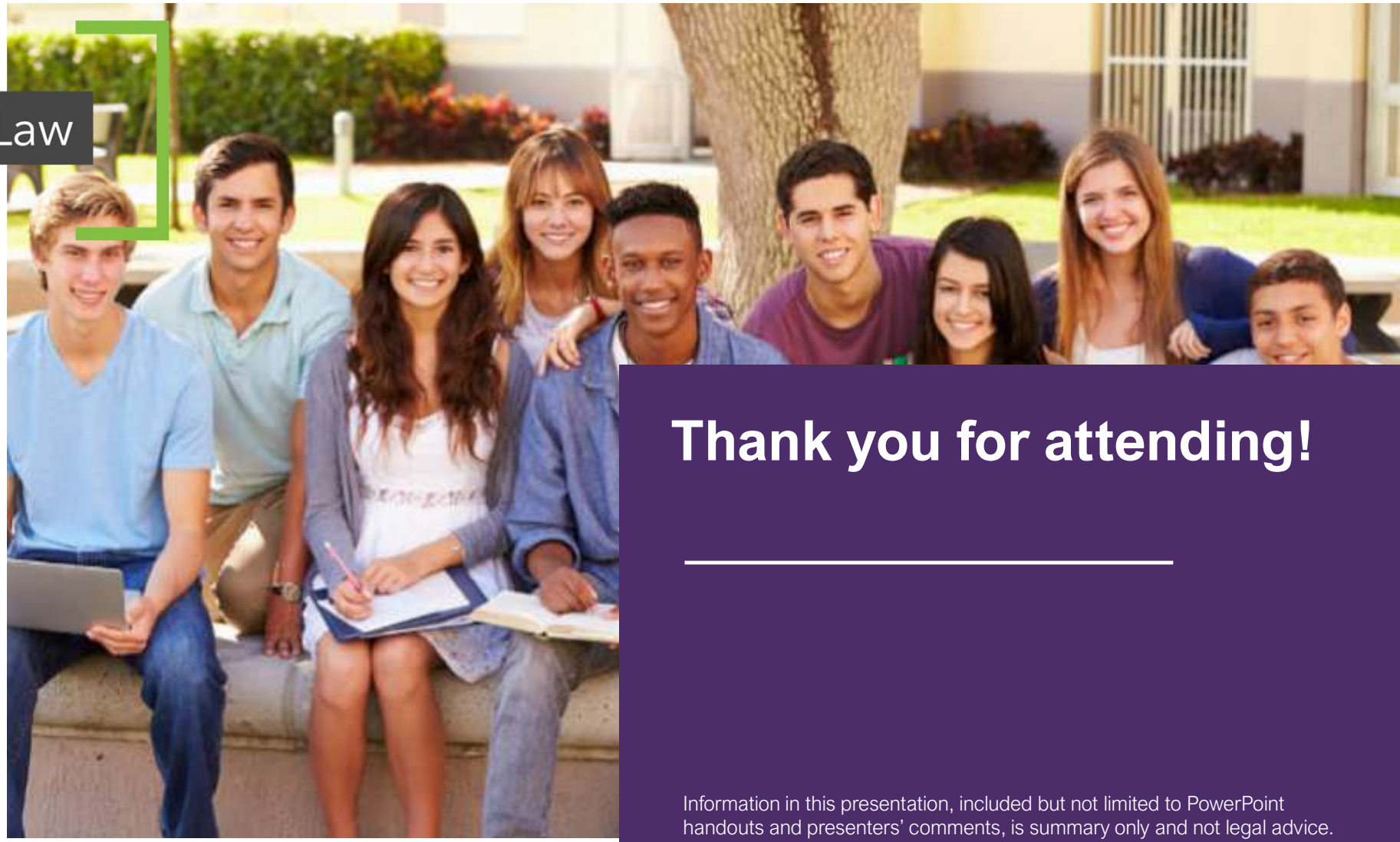
Document the following in IEP team meeting comments as evidence that team members discussed and considered IEE

- 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

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Thank you for attending!

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