

HOBBS MUNICIPAL SCHOOLS

SPECIAL EDUCATION TRAINING

PRESENTED BY JACQUELYN ARCHULETA-STAEHLIN &

MARYANN ROMAN

CUDDY & MCCARTHY, LLP



*We are Jacquelyn Archuleta-Staehlin and MaryAnn Roman
We am here to provide you with some information and answer your
questions*

*You can find us at jstaehlin@cuddymccarthy.com and
mroman@cuddymccarthy.com or 1-866-679-4476*

TOPICS FOR DISCUSSION

- 1. IEP Implementation and why it is key to provision of FAPE
- 2. What is FAPE
- 3. Goals and Objectives and Present Levels of Performance.
- 4. Accommodations and Modifications
- 5. Discipline - What happens when my 10 days are used up
- 6. How to avoid Predetermination

WHO'S RESPONSIBLE

- Every member of a student's IEP team bear responsibility for ensuring that the IEP is implemented in accordance with its agreed upon provisions. No single member of the IEP team can modify the IEP, refuse to implement the IEP or ignore the provisions of the IEP.
- In today's environment it is important that any individual who becomes aware of the schools failure to implement the IEP or feels that the accommodations are not working has an obligation to speak up and request an IEP meeting or a staffing meeting to discuss the issues.
- "Decisions about a child's program and/or placement are not simple. Districts must follow a process outlined in the IDEA. It takes a team of people, which includes the parents or guardians, using their combined knowledge and expertise to make decisions that are in the best interest of the child." NM PED Procedural Safeguards Notice

DE MINIMUS

In deciding if a student has received or a district has offered a free appropriate public education, it is first necessary to determine if the district has met standards for the provision of FAPE. The U.S. Supreme Court has held that an appropriate education for a student with a disability is one that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

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FAPE

- The High Court said the IDEA does not guarantee a particular level of education because "the IDEA cannot and does not promise 'any particular [educational] outcome.'" *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017) (citing *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)).

REASONABLENESS AND APPROPRIATE

- A "reasonableness" standard governs the provision of special education to eligible students with disabilities, but a student's educational program must be "appropriately ambitious in light of his circumstances." *Endrew F. v. Douglas*

JUDGED AT TIME WRITTEN

- An IEP must be judged as to its appropriateness at the time that it is written, not with respect to subsequently obtained information about the student. *Roland M. v. Concord Sch. Comm.*, 16 IDELR 1129 (1st Cir. 1990), *reh'g en banc denied*, 110 LRP 65965 (1st Cir. 09/14/90), *cert. denied*, 499 U.S. 912, 110 LRP 66026 (1991) ("An IEP is a snapshot, not a retrospective" and "must take into account what was objectively reasonable at the time the IEP was drafted").

CONTINUED

- The "reasonably calculated" standard of *Endrew* shows that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of a child's parents or guardians. The Court explained that any review of an IEP must determine whether the IEP is reasonable, not whether it is ideal.

GOALS

- Annual Goal is a statement that describes what a child with a disability can reasonably accomplish within a twelve month time period in the special education program.
- The Short-term Objective should be written in a sequential order to reflect a progression through the various skills needed to meet the goal.

GOALS

- The goals and objectives are to be used both to look prospectively as to what a student can reasonably be expected to achieve and retrospectively as to whether the student has achieved that goal/objective.
- Make sure related services are considered when developing a goal.

MEASUREABLE

- The goal must be written so that it can be measured and result in a showing of progress or no-progress. If there is no progress call a meeting to consider revision. If there is progress it should reflect movement towards the goal being reached within 12 months of the date it was written.

GOALS

- Short-term objectives should not be as specific as those in daily lesson daily lesson plans.
- Most importantly an IEP should not include goals that will require more than one school year to accomplish.
- Must convene an IEP meeting before changing a short term objective.

GOALS

- Remember:
 - District's must periodically report progress toward IEP goals.
 - The report needs to include a statement of the extent to which the student's progress is sufficient to enable the student to achieve the goal by the end of the year.

HOW DO WE PREPARE

Present levels of performance will become even more critical to the development of an IEP when looking at the issue or appropriate and reasonable. Without a clear cut view of the student's current status it will be difficult if not impossible to design a program that will meet the needs of the student for the next 12 months.

Present levels of performance which tie directly into the goal and objectives of a student will allow for measurement of progress as well as implementation.

STUDENT PERFORMANCE MEASURED

- IEP teams should ask a series of questions to develop a child's present levels of performance. These questions include:
 - What can the student do?
 - What is the student expected to do?
 - What will be the focus this year in order to narrow the gap between the two?

CONSIDERATIONS

- What is the impact of disability on academic and functional performance?
 - What strategies and accommodations support the student?
 - What motivates the student?
- Other Matters to Consider
 - 1) Be careful to ensure that IEP goals and objectives are individualized to student.
 - 2) If a goal is carried over from year to year make it clear in the PWN what the educational rationale is for carrying it over.
 - 3) If you include objectives in the IEP make sure they are the building blocks for the goals

PRESENT LEVELS OF PERFORMANCE

- Purpose: to describe the problems that interfere with student's education and assist in developing annual goals.
- Present levels should include:
 - Academic achievement
 - Test scores including an evaluation of the results
 - Student's current physical condition
 - Description of social/emotional maturity

PRESENT LEVELS OF PERFORMANCE

- Strengths and weaknesses including learning style. Present levels should include a description of modalities which are the most effective. PLP is not only a measure of academic achievement, but of functional performance.
- Can you answer the following question, "Does the student learn better through visual, auditory or kinesthetic activities (or some combination of these)?" If not, begin keeping records of student's performance using each modality.

ACCOMMODATIONS AND MODIFICATIONS

- Insure that accommodations and modifications are carried out in full in general education setting. If extra time given determine whether this includes in class testing and consider what accommodations or modifications are going to apply in testing situations.

ACCOMMODATIONS AND MODIFICATIONS

- State form includes place for inclusion of information from the PLP concerning instructional presentation mode(s), instructional strategies and student response mode. These should be considered not only in the goals area but also in the general education setting.

ACCOMMODATIONS & MODIFICATIONS IN THE GENERAL EDUCATION SETTING

- *The IEP should include a statement of the modification necessary*
 - *for the student to advance appropriately toward attaining his annual goals*

ACCOMMODATIONS AND MODIFICATIONS

- *To be involved and make progress in the general education curriculum and participate in extracurricular and nonacademic activities*
- *To be educated and participate with non-disabled children*

DATA SHOULD DRIVE THE PROCESS

- Gather and use data in making decisions about accommodations and modifications.
- Be specific – for example, if extra time is given, decide and document whether this includes in class testing or just assignments.
- Use a variety of methods (observations, etc) to ensure that modifications and accommodations are fully implemented in the general education setting.

CONSIDERED SELECTION

- Make sure the team chooses the right accommodations to fit the child's needs and be careful not to give the child an unfair advantage.
- Consider setting, timing schedule, presentation, response, cueing, out-of-level testing and redirection.
- When choosing an accommodation, consider whether the accommodation is based on some evidence that it will improve performance.
- If the implementation of the accommodations will require special training for staff, document how and when that training will take place

Issues to Consider . . .

BEFORE Suspending a Special Education Student:

1. First, check to see if student has an IEP.
2. If student does have an IEP, check if modifications of discipline policy have been included in IEP.
3. Calculate how many days the student has been suspended during current school year.

Issues to Consider

- 4. If more than 10 days (total - not necessarily consecutive) then you must consider requirements of the IDEA.
- 5. If considering long-term suspension (more than 10 school days) then requirements under the IDEA must be implemented.
- 6. IDEA requires a "manifestation determination" before the imposition of any long-term suspension.

Issues to Consider

7. Special circumstances are the possession of weapons or drugs or the infliction of serious bodily injury. Under these circumstances, a student may be removed immediately to an interim alternative educational setting for up to 45 days. This removal is not the same as the imposition of discipline.
8. If you are unsure, contact special education director or coordinator.

Manifestation Determination

- Before imposing suspension which will exceed 10 days (total, not necessarily consecutive) a team, including the parents and the relevant members of the IEP team (as determined by the parent and LEA), must meet and review all the relevant information in the student's file to determine if the behavior was a manifestation of the child's disability.
- This is the "manifestation determination review" or "MDR"

MDR

- The team must determine if the conduct was caused by or had a *direct and substantial relationship to the student's disability*; or
- If the conduct in question was a direct result of the LEA's failure to implement the child's IEP.
- If either of these conditions are met, the team must determine the conduct in question was a manifestation of the child's disability.

Manifestation Determination

Under the law, there must be a closer link between the behavior and the child's disability for the team to determine the behavior was a manifestation of the child's disability. An attenuated relationship (such as "low self-esteem") to student's disability will no longer suffice.

Manifestation Determination

- If it is **not** a manifestation then the student may be disciplined as any non-disabled student
- **EXCEPT**
- They must be provided FAPE

This language in the law was revised

- from services provided during removals must "enable the child to meet the goals" of the IEP
- to "enable to student to progress toward meeting the goals" set out in the child's IEP

Manifestation Determination

If the behavior is a manifestation of the child's disability, then the student's placement can only be changed by the IEP Team. The child must be returned to the placement from which the child was removed, unless the parent and LEA agree to a change as part of the BIP.

MDR CONTINUED

Conduct and FBA and BIP, unless one has been done. If one has already been done, update a modify to address current behavior.

If the manifestation determination team decides that the conduct in question is a direct result of the district's failure to implement the child's IEP, then the team **CANNOT** find that the behavior was a manifestation of the child's disability.

Conducting a Manifestation Determination Review

- Manifestation determination must be conducted within 10 days of any decision to suspend for over 10 days. ("any decision to change the placement of a child with a disability because of a code of conduct violation")
- If the team determines the LEA has not properly implemented the IEP, the LEA must take immediate steps to remedy this situation.

USE PWN

- All of the procedural safeguards must be sent to the parent
- Treat the MDR meeting like an IEP meeting and give written notice of the time, date, place, purpose and participants.
- What individuals should participate in the MDR? (relevant members of the IEP team "as determined by the parent and LEA")

MDR

- Prior to the MDR, solicit in writing from parents any information they may have which has not previously been shared including private evaluations, therapy notes and counselor input.
- At the beginning of the MDR ask parents if they have supplied all the information they want considered. This will eliminate having to reconsider decision later.
- Ask if any evaluations are pending and offer to reconsider MDR decision after review of evaluation information.
- Clarify which parts of the decision the parents agree with and which they disagree and note in the PWN.

Special Circumstances

There are three provisions in the IDEA which allow schools to change a student's placement *without first* conducting a manifestation determination. These are:

3 SPECIAL CIRCUMSTANCES

- Carries a weapon to or possess a weapon at school, on school premises or at a school function (note: weapon defined as "dangerous weapon" under federal law i.e. blade over 2.5 inches).
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school, on school premises or at a school function
- Inflicts serious bodily injury (see definition of SBI) upon another person while at school, on school premises or at a school function.

✓ There is no provision for automatic removal for dangerousness or threats.

Serious bodily injury:

- A. Substantial risk of death
- B. Extreme physical pain
- C. Protracted and obvious disfigurement,
or
- D. Protracted loss or impairment of the
function of a bodily member, organ or
mental faculty

Special Circumstances

- Under the three special circumstances, the LEA may change the child's placement (remove them from their current setting, placement or both) for *up to 45 school days* without first determining whether or not the behavior is a manifestation of their disability.

ALTERNATIVE SETTING

- During this time, the child will be placed in a interim alternative educational setting.
- This is a change in placement. It is not a suspension!
- The provision allowing the child to be placed in the interim setting has changed from **45 days** to **45 school days**.

Protections for students not yet eligible for special education

Child may assert protections of the IDEA if:

- The parent or teacher expressed concern in writing to the supervisory or administrative personnel of the LEA that the child was in need of special education or related services;
- The parent requested an evaluation; or
- The teacher or personnel of the LEA expressed specific concerns about a pattern of behavior directly to the Director of Special Education or other supervisory personnel.

Knowledge

- The LEA is deemed NOT TO HAVE KNOWLEDGE if the parent has refused to allow evaluation or services or if the child has been evaluated and not found to be a child with a disability.
- If no basis for knowledge then the LEA may discipline the student the same as students without disability.

Student not yet eligible

- However, if an evaluation is requested after the discipline has been imposed, the LEA must evaluate the student in an expedited manner.
- Student remains in the educational placement determined by the school which can include long term suspension or expulsion without educational services.
- If eligible, LEA must provide special education services.

Is "Time Out" a Change in Placement?

- In-school disciplinary measures as study carrels, time-outs or other restrictions do not constitute a change in placement. While a time out is not a significant change in placement, IDEA's free appropriate public education and nondiscrimination mandates govern the district's actions.

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TIME OUT OR CHANGE IN PLACEMENT?

- Use caution when using time out and insure that the time and place are appropriate and that these in-school measures are not being utilized so much that they in fact change the child's placement

A Context for Positive Behavior Support

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- Behavior support is the redesign of environments, not the redesign of individuals
- Pay as much, or more, attention to what happens between problem behavior bouts as what happens during instances of problem behavior. --Edward Carr
- Positive behavior support plans define changes in the behavior of those who will implement the plan.

Functional Behavior Assessment

- The identification of important, controllable, causal functional relationships applicable to a specific set of target behaviors for an individual client
- Multimodal: each behavior typically has multiple cause contributing differentially to the expression of the behavior

Behavior Intervention Plan

- Describe the expected outcomes and goals for the plan
- Specify the interventions used to achieve the goals
- Specify person who is responsible for specific interventions
- Specify a review date

AVOID PRE-DETERMINATION

Ensure that all decisions regarding a student's educational program whether it be special education or general education, are made based upon the needs of the student and application of the appropriate rules and regulations. Do not predetermine a student's needs without first knowing how the student functions in a general education setting.





Any questions?