

FAPE & IEP Basics

Educational Benefit: *Rowley & Andrew F.*

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Overview of the Evening – Class #1

- General background of special education law
- General overview of special education law
- FAPE & the *Rowley* Case
- IEP Basics
- FAPE & the *Andrew F.* Case

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Background of Special Education Laws & FAPE

- Congress first addressed the education of students with disabilities in 1966 when it amended the **Elementary and Secondary Education Act of 1965**
 - Established a grant program to assist states in the “initiation, expansion, and improvement of programs and projects . . . for the education of handicapped children.”
- In 1970, that program was replaced by the **Education of the Handicapped Act** (P.L. 91-230)
 - Established a grant program aimed at stimulating the states to develop educational programs and resources for individuals with disabilities.
- Neither program included any specific mandates on the use of the funds provided by the grants.

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Background of Special Education Laws & FAPE

- 1970's
- Bureau of Education for the Handicapped estimated that of the more than 8 million children . . . with handicapping conditions requiring special education and related services,....
 - 3.9 million children receiving an appropriate education.
 - 1.75 million receiving **no educational services** at all, and
 - 2.5 million handicapped children receiving an **inappropriate education.**

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Background of Special Education Laws & FAPE

- 1975, Congress enacted **The Education for All Handicapped Children Act of 1975** . Congress intended that all children with disabilities would “have a right to education, and to establish a process by which State and local educational agencies may be held accountable for providing educational services for all handicapped children...”
- 1990, Congress reauthorized EHA and changed the title to IDEA.
- IDEA is composed of four parts:
 - **Part A covers the general provisions of the law,**
 - **Part B covers assistance for education of all children with disabilities,**
 - Part C covers infants and toddlers with disabilities which include children from birth to age three,
 - Part D is the national support programs administered at the federal level

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Six elements of IDEA

- Individualized Education Program (IEP)
- Free and Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Appropriate Evaluation (aka “assessment)
- Parent and Teacher Participation
- Procedural Safeguards


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Purpose of the IDEA – Let's Look It Up!

- Ensure FAPE to children with disabilities
- Ensure the rights of those children are protected
- Assist states/agencies in providing an education
- Assess/ensure effectiveness of efforts to educate children with disabilities


34 Code of Federal Regulations 300.1
34 C.F.R. 300.1

20 Unites States Code 1400(d)
20 U.S.C. 1400(d)

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Overview of Special Education Law

- Federal Law - IDEA
 - 20 U.S.C.
 - 34 C.F.R.
- California State Law
 - Education Code
 - California Code of Regulations, Title 5
- Federal Court Cases
 - United States Supreme Court
 - 9th Circuit
 - Federal district courts
- State Court Cases
- Administrative Agency Decisions - OAH
- Federal/State Guidance – OSEP, OCR, OSERS, CDE

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**Let's look up
IDEA, OAH**

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Group Work:
Let's look at the Rowley Case

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FIRAC Format

- Facts
 - Describe the student: disability, age, grade
 - Describe the IEP offer
 - Describe the chronology of events
- Issue
 - What is/are the legal issue(s)?
- Rule
 - What is/are the rules of law?
 - Use IDEA, state law and court cases
- Analysis
 - Discuss how the facts of the case apply to the rules of law
- Conclusion
 - What did the court ultimately conclude?

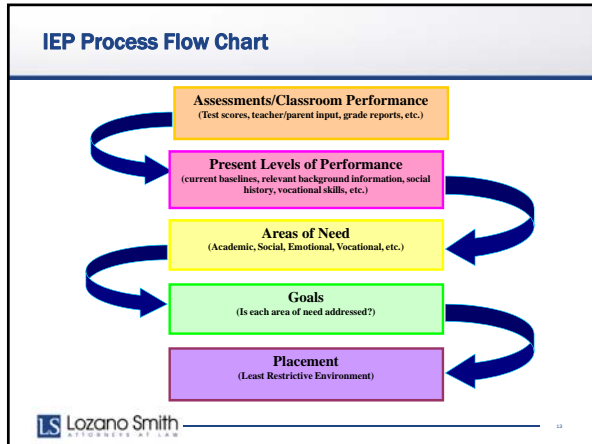
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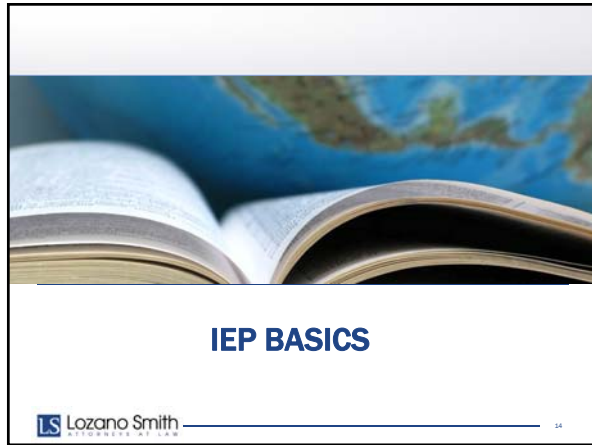
Legally-Defensible IEPs



- Present levels
- Goals
- Services
- Placement
- Notes

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FAPE

To provide a FAPE districts must:

- Identify, locate, and assess students with suspected areas of disability (a.k.a. "child find");
- Develop an appropriate IEP for each eligible child; and
- Implement the IEP in a timely and consistent manner.

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FAPE

Some examples of **substantive** FAPE violations:

- Not addressing all of student's needs;
- Not offering sufficient services; and
- Failure to implement some part of a student's IEP.


Some examples of **procedural** FAPE violations:

- Missed timelines;
- Missing IEP team members; and
- Failure to provide prior written notice.


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When Must An IEP Be Held?

- At least once per year.
- Within 30 days of parent request
- Other times as needed, such as when the student demonstrates a lack of anticipated progress.




(Ed. Code § 56343)


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Scheduling The IEP

- IEPs must be scheduled at a mutually agreed-upon time and place.
- The district must take steps to ensure that at least one parent or guardian can participate in the IEP.



(Ed. Code § 56341.5)

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Planning The IEP Team Meeting

What if a parent refuses to come to an IEP?



- Do everything you possibly can to try to persuade them to come.
- Encourage alternative means of attendance, such as teleconferences.
- Try to contact them by phone, mail, even visits to the house.
- Document your attempts to work with the parent.
- If all else fails, hold the meeting without them (really—only if all else has failed spectacularly).
- Do this for every meeting!

(Ed. Code § 56341.5(h).)

Who Must Attend An IEP Team Meeting?

- Parents
- Special education teacher **of the child**
- General education teacher **of the child**
- District representative
- Student, when appropriate
- Individuals who can interpret instructional implications of assessments
- Other individuals with knowledge or special expertise
- Other agencies (e.g., previous district, private school)

(Ed. Code § 56341(b).)

Who Must Attend An IEP Team Meeting?

When is a general education teacher required?



- If the child is, or *may be*, participating in the regular education environment.
- IEP teams for preschool age students must consist of at least one general education preschool teacher if the student may be placed in a regular education environment.
- The general education teacher must *participate* in the IEP meeting, not simply sign the IEP.

Who Must Attend An IEP Team Meeting?

When should the Student be invited to attend the IEP meeting?



- When appropriate.
- Beginning not later than the first IEP *that will be in effect* when the student reaches age 16, the IEP team notice must indicate that transition services will be discussed and that student is invited to attend.

Who Must Attend An IEP Team Meeting?

What if a team member is not available for an IEP?



- The parent and district can agree in writing **prior to the meeting** to excuse a team member.
- If the member's area is a topic of the meeting, the member must provide prior input in writing.
(Ed. Code § 56341.)
- Make sure to obtain written input in advance


Attorneys At IEPs

School districts (and parents) have a right to be represented by counsel at IEP team meetings.





Planning the IEP team meeting

- Draft IEP, including goals.
- Draft an agenda.
- Arrange for an interpreter if necessary.
- Decide who will conduct the meeting, who will take minutes, and who will write the IEP during the meeting.
- Hold a pre-IEP staffing.

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Draft IEPS And Pre-meetings




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No Predetermination


Be sure to avoid allegations of predetermining a student's IEP.

[**Click Here to request a Predetermination Letter**](#)

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The IEP Team Meeting

Parent Participation is Crucial



- Give parents their procedural rights notice at least once per year and upon parental request.
- Ensure that parents participate throughout the IEP meeting.
- Consider every placement that the parents want to discuss.
- Document parent participation in the meeting notes.


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Group Work:
What must be included in every IEP?
What is the legal citation?

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The IEP Team Meeting

Key components of every IEP



- Present levels of performance.
- Goals for every area of need.
- Program and placement.


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PRESENT LEVELS OF PERFORMANCE

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Present Levels Of Performance



Accurate and complete present levels are crucial to identify the student's abilities and needs as of the time of the IEP team meeting.

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Present Levels Of Performance

How detailed do PLOPs need to be?

- Accurately and clearly describe the effects of the student's disability on performance.
- Raw scores and grade levels alone are not sufficient.
- PLOPs may refer to reports which must be available and attached to the IEP.

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GOALS & OBJECTIVES

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Goals And Objectives



- Every area of need
- Measurable baselines
- Measurable goals
- Baselines should be tied to the goal.

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PLACEMENT


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Placement

Procedural requirement:

One specific written offer of placement




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Placement

Substantive requirement:

Reasonably calculated to confer **educational benefit** in the **least restrictive environment**.



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Placement


The placement offer must be SPECIFIC, and include:

- A description of each service
- Location (type of classroom and name of school)
- Personnel (titles, not names)
- Delivery model (e.g., individual or small group)
- Frequency and duration (not "as-needed")

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What does *not* have to be included in a placement offer?



- The names of specific teachers or service providers.
- The educational methodology to be used (unless only one methodology can provide a FAPE).

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Placement

Least Restrictive Environment:

- Students must be mainstreamed to the maximum extent appropriate.
- *Holland* factors:
 - Educational benefit
 - Non-educational benefit
 - Effect on teacher and other students

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Placement

Educational Benefit:


- *Endrew F.* – March 2017 United States Supreme Court Case
- *Rowley* still applies: Must provide “some” educational benefit.


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Placement


Placement considerations:

- Assessment data and teacher reports
 - Do they raise any red flags about current placement?
 - Do they recommend or call for changes to program?
 - Do they identify needs that aren't being addressed?


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SERVICES


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At The IEP Meeting




- Team should offer appropriate services.
- Parents have the right to:
 - file for due process, or
 - refuse consent

This should not deter team from completing IEP and offering services.

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Related Services


Part of the placement offer is related services. What are "related services"?



- California = Designated Instruction and Services ("DIS"), e.g., speech and language, occupational therapy.
- Transportation and supportive services required to assist a student to benefit from special education.

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Group Work:
Let's look at the *Endrew F.* Case

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Practice Paper

- Mia is 13 years old and in the 8th grade.
- Eligible as SLD, with processing deficit in attention and discrepancy in reading fluency and reading comprehension.
- PLOP - Student reads at the 5th grade level with 65% fluency.
- Placement: Mainstreamed in 5 periods per day; 1 period per day of "study skills."
- Student is earning a D in English/Language Arts. Earning B's and C's in all other classes.
- Student met 1 out of 2 reading goals from last year.
- Parent is concerned about progress.
- Issue: Is the student receiving a FAPE?

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Questions




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