Special Education 101: IEP Content and Substantive FAPE

ACSA 2018
Every Child Counts Symposium

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What We’ll Cover

- Substantive FAPE
- IEP Development
- Related Services
- Postsecondary Transition
- Extended School Year
- Disciplinary Removals
I. Substantive FAPE
WHAT IS “FAPE”?  

- **REMEMBER THE TWO PRONGS:**  
  - **Procedural FAPE**  
    - Has the school district complied with the procedures set forth in the IDEA?  
  - **Substantive FAPE**  
    - Is the IEP reasonably calculated to enable the student to make progress appropriate in light on the student’s circumstances?
Substantive FAPE

- Services offered to the student
- Services provided to the student
- The IEP is the vehicle we use to deliver a substantive FAPE
The **Rowley** FAPE Standard

- 1983 Supreme Court decision used phrase “some educational benefit” as standard for evaluating whether school district has complied substantively with IDEA
- **Rowley** decision expressly declined to adopt more specific test for determining adequacy of educational benefits provided under a given IEP
Endrew F.

U.S. Supreme Court (2017)
- Reversed 10th Circuit’s decision
- In order to meet their substantive obligations to provide FAPE under IDEA, school districts must offer IEPs that are “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”
Endrew F.

- Court declined to establish any “bright-line” standards for IEPs
  - “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created”
  - Court: Absence of such bright-line rule should not be mistaken for “an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review”
II. IEP Development
Connect the Dots

- Present levels
- Areas of Educational Need
  - For which special education is required
  - Maybe related services
- Goals
- Placement (Special Education)
  - Supplementary Aids and Services
- Supports for General/Special Education
  - Related Services
  - Supplementary Aids and Services
  - Accommodations/Modifications
Present Levels

- Each IEP must contain “[a] statement of the child’s present levels of academic and functional performance, including,
  - How the student’s disability affects his or her involvement and progress in the general education curriculum, or
  - For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities
Present Levels

- Strengths and preferences
  - Positives

- Parent concerns

- Content
  - Identify areas of need that interfere with child’s education
  - Provide baseline information of where student is performing
  - Give relevant background regarding strengths, interests, learning style, weaknesses
Present Levels

- Are the foundation of the IEP
- Are the key to creating a legally defensible IEP
- Must consider the unique needs of the student
- Should include information from various members of the IEP team
  - Not just assessment results
- Must be written with enough detail that parents are informed and have input into the decision-making process
Areas of Need

- Pre-academic/Academic/Functional Performance
- Communication Development
- Gross/Fine Motor Development
- Social Emotional/Behavioral
- Vocational
- Adaptive/Daily Living Skills
- Health
Areas of Need

- Identify areas of need
  - Extracted from present levels, and could be
    - Academic in nature
    - Non-academic in nature
- Identify all needs
- Make sure Behavior is discussed and identified
  - Ask whether behavior impedes learning of student or others and if so, then address through goals, BSP or BIP
  - Remember, if behavior impedes learning, it **MUST** be addressed
Special Factors

- Assistive Technology – required for the student to access his or her education
  - Consider both high and low tech
- Low incidence equipment
- English Language Learner
- Behavior impede the student’s learning or the learning of others?
  - If yes, must address
Special Factors

- Behavior Interventions
  - Behavior goals
  - Accommodations
  - Behavior intervention plans
  - Changes in placement – where other strategies have proven ineffective

- Consider and document all efforts to address behavior
When Must Behavior Be Addressed?

1. When behavior “impedes” learning—the student’s, or others’

2. For certain disciplinary actions resulting from student’s misconduct
View Behavior Interventions on a Continuum

- School Rules
- Classroom Behavior Management
- Accommodations, Modifications, and/or Adaptations
- Supplementary Aids & Services
- Functional Behavioral Assessment
- Behavioral Intervention Plan
- IEP Goals
- Change in Placement
IEP Goals

- Goals address needs
- Goals must be measurable
  - Include measurable baselines?
- Goals drive services
- Goals drive placement
- Address behavior through goals, BSP or BIP
IEP Goals

“Stranger test”

- Under the test, an IEP goal is appropriately written if
  - A person unfamiliar with the IEP would be able to implement the goal
  - implement the assessment of the student's progress on the goal, and
  - determine whether the student's progress was satisfactory

(Mason City Community Sch. Dist. (SEA IA 2006))

- Although this is not a CA case, it’s a good rule to live by
Think of Goals as an “ICP”

IEPs must be judged from the perspective of the IEP team at the time of the IEP; an IEP is a “snapshot” of the facts at the time of the IEP.

Adams v. State of Oregon (9th Cir. 1999)
Where do you gauge progress?
Accommodations & Modifications

- Must indicate accommodations and modifications
  - Remember there is a difference
    - Modification means . . .
    - Accommodation means . . .
Accommodations & Modifications

- Required to allow the child to access his or her education
- Personalized to the student’s needs
- Include all necessary information
- Avoid “as needed”

CDE’s requirement that the District include supplementary aides related to personnel
Placement and Related Services

- The IEP team must examine student’s goals to determine appropriate placement and services
  - Goals drive placement offered to student
  - Goals drive related services offered to student
Placement and Related Services

Predetermining Placement

- “A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.”

(Ms. S. ex rel G. v. Vashon Island School Dist. (9th Cir. 2003) 337 F.3d 1115, 1131.)
Placement and Related Services

- **Offer of a FAPE - Educational Setting**
  - In completing the % of time portion
    - Think about the full school day, not just instructional minutes
    - Maximize student’s time with typical peers
    - A less restrictive special education class does **not** constitute mainstreaming
  - Explanation of why not in general education
  - Other agencies involved in Student’s program
  - Activities to support transition – document
  - Graduation plan – at the time of the meeting
Once a student is eligible, the student needs goals to address all areas of needs—even if those needs, by themselves, would not qualify a student to receive special education services (Lancaster ESD (SEHO 2003))

Don’t make final placement decisions until goals have at least been proposed; however, there is nothing wrong with meeting beforehand to discuss or develop drafts
Placement and LRE

100% Outside General Ed

- Remember:
  - Must indicate on IEP amount of time in general education
    - If not 100% in general education, must indicate on IEP why not 100%
      - The IEP document asks the question—you just need to fill in the answer
Least Restrictive Environment

The LRE Mandate

- To the maximum extent appropriate, students with disabilities should be educated with nondisabled students; and

- Special classes, separate schooling or other removal of children with disabilities from general educational environment occurs only if nature or severity of disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily

(34 C.F.R. § 300.114; Ed. Code, § 56031)
LRE (cont’d)

- LRE Terminology Review
  - “Full inclusion”: Placement full-time in general education classroom with supplementary aids and services (which can include one-to-one aide)
  - “Mainstreaming”: Placement in special education setting with part-time participation in general education classroom with academic and/or nonacademic support services
LRE (cont’d)

9th Circuit: Rachel H. four-factor balancing test:

- 1. Educational benefits of general education with supplemental aids/services
- 2. Non-academic benefits of general education classroom
- 3. Effect of student’s presence on others in general education classroom
- 4. Cost of providing instruction/services in general education classroom (rarely litigated)

(Sacramento City Unified School District v. Rachel H. (9th Cir. 1994) 14 F.3d 1398, 20 IDELR 812)
LRE (cont’d)

- 9th Circuit has also held that general education placement cannot be LRE for every student with a disability
  - “In some cases, such as where the child’s [disability] is particularly severe, it will be impossible to provide any meaningful education to the student in a mainstream environment”
  - IDEA’s mandate for FAPE “qualifies and limits its mandate for education in the regular classroom”

(Poolaw v. Bishop (9th Cir. 1995) 67 F.3d 830, 23 IDELR 406)
III. Related Services
What Are Related Services?

**IDEA**
- Related services means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education

**California Ed Code and Title 5 Regulations**
- Ed Code restates IDEA definition
- Amended Title 5 regulations contain separate definitions for each enumerated related service
- Regs also substitute “related services” for “designated instruction and services” (“DIS”)

(34 C.F.R. § 300.34; Ed. Code § 56363; Cal. Code. Regs., tit. 5, §§ 3051.1-3051.24)
Related Services Include . . .

- Transportation
- Speech/language
- Audiological services
- Interpreting services
- Psychological services
- Physical and occupational therapy
- Orientation and mobility
- Health care services
- Vision/vision therapy (CA)

- Recreation, including therapeutic recreation
- Counseling services
- Rehabilitation counseling
- Parent counseling and training
- Medical services (for diagnostic and evaluation purposes only)

(34 C.F.R. § 300.34; Ed. Code § 56363; Cal. Code. Regs., tit. 5, §§ 3051.1-3051.24)
U.S. Department of Education:

- Related services include other supportive services that are required to assist a child with a disability to benefit from special education.
- The list of services in [34 C.F.R. § 300.34] is “not exhaustive.”
- “It would be impractical to list every service that could be a related service. . . .”

What Is Not a Related Service?

- **Medical services**
  - Except to determine medical disability that results in need for special education and related services
  - Otherwise apply U.S. Supreme Court’s “bright-line rule”
    - Districts must provide health care services, if necessary, unless the service can only be provided by a licensed physician (Tatro and Cedar Rapids decisions)

- **Surgically implanted devices**
  - Optimization (mapping) of that device’s functioning, maintenance of the device or its replacement
IEP Requirements

- Need for related services determined on individualized basis
- At no cost to parents
- Based on valid assessment data
- Must be reflected in IEP
  - Anticipated frequency, location and duration
  - “Clearly stated . . . in a manner that can be understood by all involved in the development and implementation of the IEP”

Related Services Providers

- Qualifications consistent with state-approved or state-recognized certification, licensing and/or registration requirements
- Providers must be either:
  - Employees of district/COE
  - Employed under contract
  - Employees/vendors/contractors of State Dep’t of Health Care Services or State Hospitals or designated local public health/mental health agency
- Title 5 regulations list specific provider qualification requirements for each related service

(34 C.F.R. § 300.156; Cal. Code. Regs., tit. 5, § 3051)
Transportation

- If district provides to general education population...it MUST provide to students with disabilities
  - If district does NOT provide to general education population...it must DECIDE whether transportation is needed as related service

- Definition of “transportation” includes:
  - To and from school and between schools
  - In and around school buildings
  - Specialized equipment if required to provide transportation (i.e., adapted buses, lifts, ramps)

(34 C.F.R. § 300.34(c)(16))
Transportation

- Also can include:
  - Safety devices, curb cuts, specialized seats, harnesses, handrails, two-way radios, emergency medical equipment, and more . . .

- Determined based on student’s unique needs
  - Medical health needs
  - Accessibility of curbs, sidewalks, etc.
  - Age of student
  - Cognitive ability, adaptive behavior, and/or communication skills
  - Behavior plans during transport
  - Distance/duration of ride
  - Nature of areas traveling through
  - Other public assistance in route
Transportation Options

- None
- Regular school bus
- Regular school bus with supports
- Public transportation
- Special education designated bus
- Taxi or specialized shuttle
- Parent transport with reimbursement
IEP Team Practice Pointers

- Determining need for transportation:
  - Do students’ disabilities make it problematic to get to school in same manner as nondisabled peers?
    - If yes, IEP team should determine specific transportation arrangements necessary for student to benefit from educational program
    - If no, district may offer the same transportation that it offers to general student population
PT, OT and APE

- **OT includes:**
  - Improving, developing, or restoring functions impaired or lost through illness, injury or deprivation
  - Improving ability to perform tasks for independent functioning if functions are impaired or lost
  - Preventing, through early intervention, initial or further impairment or loss of function

- **PT defined simply as “services provided by qualified physical therapist”**
  - Concerns addressed by PT include balance, coordination, posture, endurance, etc. (34 C.F.R. § 300.34(c)(6), (9))
PT, OT and APE

- Districts are not responsible for providing OT and/or PT unless IEP team determines that student has educationally related need that only OT or PT (or both) can address

- OT and PT issues are frequently litigated in OAH due process hearings
  - Whether student requires services
  - Manner/location in which services are provided
  - Frequency and duration of services
PT, OT and APE

“Adapted physical education”
- For students who are precluded from participation in general physical education program, modified general physical education program or in a specially designed physical education program in a special class

Need for APE may be based on:
- Movement delays or difficulties
- Physical or neurological difficulties
- Health and physical factors
- Emotional disorders, behavior difficulties or cognitive delays

(Cal. Code. Regs., tit. 5, § 3051.5)
Assistive Technology

- IEP team must consider whether student requires AT devices and services in order to receive FAPE

- AT “device”:
  - Item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve student’s functional capabilities

- AT “services”:
  - Any service that directly assists a child with a disability in the selection, acquisition or use of AT device

(34 C.F.R. §§ 300.5, 300.6)
Assistive Technology

Case Example: Los Angeles USD (OAH 2011)

- **Facts:**
  - Parents requested iPad for 7-year-old Student with orthopedic impairments
  - After 60-day touchscreen trial period, District found Student understood and grasped concepts easier when he could manipulate objects, in a way more beneficial to him than using the touchscreen
  - Parent argued that Student could use iPad independently and appropriately, and used his home iPad on a daily basis
Assistive Technology

Case Example: Los Angeles USD (OAH 2011)

- Decision:
  - ALJ denied iPad request: No duty to maximize Student’s potential
  - District’s decision to forego touchscreen technology after 60-day trial, and focus instead on using other methods to address Student’s needs – particularly in the area of writing – was reasonable, given success Student had demonstrated using those methods, and given the lack of success on touchscreen

(Student v. Los Angeles Unified School Dist. (OAH 2012) Case Nos. 2012061201, 113 LRP 2044)
Health and Nursing Services

- May include:
  - Providing services by qualified personnel
  - Managing the student’s health problems on the school site
  - Consulting with students, parents, teachers, and other personnel
  - Group and individual counseling with parents and students regarding health problems
  - Maintaining communication with health agencies that provide care to student

(Cal. Code. Regs., tit. 5, § 3051.12)
Health and Nursing Services

- May also include “specialized physical health care services” if necessary to meet student’s needs
  - Services as prescribed by student’s physician/surgeon
  - Require medically related training for the individual who performs the service
  - Necessary during the school day to enable the student to attend school
  - Must be included in IEP

(Cal. Code. Regs., tit. 5, § 3051.12)
IEP Team Practice Pointers

Tips to help ensure compliant IEPs when student requires health services:

- Make sure IEP team members understand qualification requirements for particular services student may need
- Partner with medical professionals to ensure staff responsible for implementing health care provisions receive appropriate training
- Collaborate with parents and physicians throughout school year to keep abreast of changing needs and convene IEP meeting ASAP if those needs change
Hearing and Vision Services

- Includes
  - Audiology
    - Identification of hearing loss, determining range of loss, provision of habilitative activities, counseling
  - Interpreting services
  - Vision services and vision therapy
    - Adaptations in curriculum and environment; consultative services; remedial and/or developmental services
  - Orientation and mobility services
    - Provided to visually impaired students to help them attain systematic orientation to – and safe movement within – their environments at school, home and in community

(34 C.F.R. § 300.34(c)(1), (4), (7); Cal. Code Regs., tit. 5, §§ 3051.7, 3051.75)
Speech and Language Services

- Includes
  - Identification/diagnosis of children with speech or language impairments
  - Referral for medical or other professional attention necessary for the habilitation of speech or language impairments
  - Provision of speech and language services for the habilitation or prevention of communicative impairments
  - Counseling and guidance

- Like OT/PT, extent and nature of speech/language services are frequently litigated at due process

(34 C.F.R. § 300.34(c)(15))

Fagen Friedman & Fulford LLP
Mental Health Services

- AB 114 (2011) shifted responsibility back to districts for educationally related mental health services that are necessary to provide FAPE
- School-based mental health services now governed by the IDEA
  - Endrew F. standard
  - Mental health is a related service
Mental Health Services

- Can include (in addition to school health/nursing services):
  - Psychological services
  - Counseling and guidance services
  - Social worker services
  - Family counseling

- School psychologist can provide most forms of counseling, but not social work

- Beginning to see increase in OAH decisions involving mental health therapy issues
IEP Team Practice Pointers

Tips for addressing student’s changing mental health needs:

- Involve all needed individuals – psychologist and/or mental health professionals – in IEP review to understand whether current services are inadequate
- If team does not believe it has clear picture of how/why needs have changed, consider reassessment
- Remember that appropriateness of IEP is determined at time it is developed; revising to add additional services does not infer that prior IEP denied FAPE
Recreation Services

■ Includes
  ■ Therapeutic recreation services (to help students become independent in leisure activities)
  ■ Recreation programs in schools and the community
  ■ Provision of nonacademic and extracurricular leisure activities
  ■ Leisure education programs (including teaching of social skills necessary to engage in leisure activities)

■ Very few OAH decisions involve recreation services

(Cal. Code Regs., tit. 5, § 3051.15)
Related Services for Parents

Several related services provisions in IDEA and California regulations also allow for the services to be provided to the student’s parents and other family members when they are required for the student to benefit from his or her education.

For example, social work service can include individual and group counseling with the student and his or her immediate family; psychological services can consist of consultative services to students and parents; and transportation can include reimbursements for visits to residential placement.
Related Services for Parents

“Parent counseling and training” includes:

- Assisting parents in understanding special needs of their child
- Providing parents with information about child development
- Helping parents to acquire necessary skills that will allow them to support implementation of their child's IEP or IFSP

(34 C.F.R. § 300.34(c)(8).)
IEP Team Practice Pointers

- Tips on determining when to include parent counseling and training in IEP
  - If parents are in need of assistance and information to understand nature of student’s disability
  - If parents need to learn skills to assist student with services (e.g., how to operate assistive technology device)
  - If parents directly involved in supporting implementation of IEP (e.g., at-home behavior management strategies)
IV. Transition from High School to Postsecondary Activities
Postsecondary Transition

Who?

- Students who will turn 16 during time period covered by their IEP
- Transition goals, planning and/or services may be discussed for students younger than 16 when appropriate

When?

- Transition plan must appear in IEP not later than first IEP to be in effect when Student turns 16 and updated annually thereafter

(Ed. Code, § 56043 and 56345)
Postsecondary Transition

■ What? Transition plan must include:
  □ Measurable postsecondary goals based on age appropriate transition assessments related to
    ■ Training
    ■ Education
    ■ Employment
    ■ Independent living skills, where appropriate
  □ Transition services needed to assist Student in reaching those goals

(34 C.F.R. § 300.320(b))
Postsecondary Transition

What are transition services?

- Coordinated set of activities that:
  - Is designed within results-oriented process focused on improving academic and functional achievement to facilitate movement from school to post-school activities
  - Is based on Student’s individual needs, taking into account strengths, preferences and interests
  - Includes instruction, related services, community experiences, development of employment and other post-school adult living objectives

(34 C.F.R. § 300.43)
Postsecondary Transition

- What are transition services? (cont’d)
  - May include special education or related services
  - IEP must identify:
    - Date the Student will begin receiving the service(s)
    - Frequency which the service(s) will be provided
    - Location at which service(s) will be provided
    - How long the service(s) will continue

(34 C.F.R. § 300.320(a)(7))
Postsecondary Transition

Procedural Requirements

- Invite Student to IEP meeting; if Student does not attend, ensure preferences and interests are considered
- Invite representative of participating agency responsible for providing/paying for services; Parents must consent
- IEP meeting notice to Parents must:
  - Include statement that purpose of the meeting is to consider postsecondary goals and transition services
  - Indicate that Student will be invited
  - Identify agency that will be invited to send representative

(34 C.F.R. § 300.321-300.322)
Postsecondary Transition – Cases

Although some cases address procedural issues of transition planning and services (e.g., failure to invite Student to IEP meeting), most focus on substantive adequacy of District’s transition plan.

A few examples . . .
Postsecondary Transition

Failure to Meet Needs of Student with Autism
Student v. Los Angeles USD (OAH 2013)

- ALJ: District failures “extended to every aspect of Student’s transition plan”
  - Failure to administer comprehensive assessment
  - Sole goal – communication of personal preference – was vague and unmeasurable
  - Vocational activities in plan were not individualized to Student, whose abilities were below what was required to complete activities
  - Failure to implement relevant portions of plan

(Student v. Los Angeles Unified School Dist. (OAH 2013) 62 IDELR 68)
Postsecondary Transition

- Job in Teacher’s Office ≠ Real-World Work
  

  - Transition plan for Student with autism did not address needs for independent living skills or community employment experiences
    - Vocational goals vague and obsolete
    - Employment training confined to on-campus simulations that included “mock job” in teacher’s office
    - Work was unrelated to Student’s interests or aspirations and did not substitute for “real-world experiences”

(Student v. Horizons Instructional Systems Charter School (OAH 2012) 58 IDELR 145)
Postsecondary Transition

Plan Fails to Address Adaptive Living Skills
Student v. Bellflower USD (OAH 2017)

- Postsecondary transition plan for Student with autism and ID addressed education/employment, but not adaptive living
- No observation of Student’s adaptive capabilities outside of school setting
- Failure to provide goals/services to enable Student to function in community denied FAPE
- Student lacked adaptive skills to pursue postsecondary employment
- District practice was not to provide services for living skills to students on diploma track

(Student v. Bellflower Unified School Dist. (OAH 2017) Case No. 2016090310)
Postsecondary Transition – Practical Pointers

- Start early in developing transition plan; it must be in effect when Student turns 16
- Don’t forget: Student must be invited to IEP meeting at which transition is to be discussed
- Encourage and foster parental participation and help families sort through available agencies and options
Postsecondary Transition – Practical Pointers

- Identify specific transition needs (e.g., driver license, job application, college application; pay bills, etc.) and design a statement accurately summarizing those needs.

- State transition goals completely and carefully, but realistically.

- Design clear, concise statement of transition services.
V. Extended School Year
Some Background

- ESY is not:
  - Based on category of disability
  - A child care service
  - An automatic program provision from year to year
  - Summer school, compensatory program or enrichment services
  - Required to be provided in traditional classroom setting
  - Required to maximize student’s potential
So What Is ESY?

- Special education and related services that:
  - Meet state standards
  - Are provided to a special education student beyond the district’s normal school year
  - Are provided in accordance with student’s IEP
  - Are provided at no cost to parents
  - Are provided only if IEP team determines that services are needed for student to receive FAPE

(34 C.F.R. § 300.106)
Role of IEP Team

- No legal obligation to discuss or offer ESY to every student
- But since ESY services cannot be limited to particular categories of disabilities, prudent best practice is to raise possible need for ESY at each annual IEP meeting

ESY Eligibility Standard

California regulations:

- Student has disabling condition likely to continue indefinitely or for prolonged period; and
- Interruption of program during summer break may cause regression, when combined with limited recoupment capacity, makes it unlikely that student will attain level of self-sufficiency and independence that would otherwise be expected
- Clear lack of evidence of such factors may not be used to deny ESY if IEP team determines a need and includes it in IEP

(5 C.C.R. § 3043)
Regression/Recoupment

- Regression = Decline in knowledge or skills that can result from interruption in education
- Recoupment = Amount of time it takes to regain prior level of knowledge or skills
ESY Eligibility

Case Example: Vista USD (OAH 2013)

- 12-year-old with OHI (ADHD)
- Not provided ESY as District had no indication that Student could not recover information lost over summer when teachers reviewed material at beginning of school year
- Parents pointed to low assessment test score for sixth grade, but that information was not yet available at time of IEP meeting
- ALJ upheld District’s decision of no ESY eligibility
- Rationale: No regression/recoupment issues

(Vista Unified School Dist. v. Student (OAH 2013) No. 2013070169)
Practice Pointer

- Determining need for ESY services should not be made as “game time” decision at annual IEP meeting
  - Instruct teachers and service providers at beginning of year to collect data and record any decline in Student’s performance following breaks/vacations
  - Analyze data periodically throughout school year
  - Develop (and keep current) ESY “worksheet” with summaries of observations, evidence of regression, indications of recoupment difficulties and list of other available options
ESY Programs and Services

- Districts must provide ESY services that meet student’s individual needs in order to provide FAPE
  - Services offered during ESY must be comparable in “standards, scope and quality” to regular year special ed program
- But remember: Criteria for determining whether student needs ESY services to receive FAPE is different (purpose of ESY is to prevent regression)

(Cal. Code Regs., tit. 5, § 3043(f)(2))
Practice Pointer

Consider the following to enable ESY service providers to successfully implement program developed by IEP team:

- Ensure providers have copy of completed IEP and understand how to implement it
- Discuss targeted goals and regression/recoupment issues
- Make sure providers have access to supplementary aids and services, including assistive technology
- Identify data that providers should collect so that team can determine success of ESY services and address new issues that might arise over the summer
VI. Disciplinary Removals
Disciplinary Removals

4 Categories of Removal

10 School Days or Less

>10 Cumulative Days – No Change of Placement

>10 Cumulative Days – Change in Placement

>10 Consecutive Days
Know the Pattern

- Pattern of removals exists when:
  - Student’s behavior is “substantially similar” to behavior in previous incidents; and
  - Considering other factors
    - Length of each removal
    - Total time Student has been removed
    - Proximity of removals to one another

- District must “police itself” in documenting and determining when pattern exists

(34 C.F.R. § 300.536)
Practice Pointers

- Appoint administrator to determine when/whether series of short-term removals amounts to change of placement
- Proper calculation of suspension time is critical
- Know the rules for bus removals, in-school suspensions and partial-day removals
“Substantially Similar”

- To determine if Student’s behavior is “substantially similar” to behavior in previous incidents, consider:
  - Nature
  - Duration
  - Proximity in time

- Pushing other students, throwing rocks, throwing food, verbal threats were considered “substantially similar”

(Student v. Cloverdale USD (OAH 2011) No. 2010081062)
Practice Pointers

- Use common sense when weighing whether a Student’s latest behavior is “substantially similar” to past misconduct.
- Anticipate parents to challenge decision of no substantial similarity – and be prepared to support it.
When a disciplinary change of placement occurs:

- Notify parents immediately
- Provide parents with procedural safeguards notice
- Implement services starting on the 11th day of disciplinary removal in the school year
- Conduct MD within 10 school days

(34 C.F.R. § 300.530(e),(h); 34 C.F.R. § 300.503; 34 C.F.R. § 300.504)
Practice Pointers

- Be prepared to act quickly!
- Once you determine a removal is a change of placement, send notice to parents the same day.
- If possible, contact parents that day to schedule MD review and IEP meeting.
In- School Suspensions

ISS is not considered part of days of suspension relevant for change of placement so long as Student is:

- Afforded opportunity to participate in general curriculum
- Continues to receive IEP services
- Continues to participate with nondisabled children to extent he or she otherwise would have

Bus Suspensions

- If transportation is part of Student’s IEP (i.e., a related service)
  - Bus suspension treated as a removal for IDEA purposes if district doesn’t offer other form of transportation
  - But California law requires districts to provide an alternative form of transportation at no cost

- If transportation isn’t related service, bus suspensions not considered “removal”

Partial Day Suspensions

- Partial days of suspension count as removals
- No guidance as to whether each partial day must be “rounded up” to full day when counting the 10 days of removal
- Many Districts “round up” as cautious approach

Practice Pointers

- Document all partial removals completely and accurately
- Make sure there is a record of time, date, and reason that Student is sent home early
- System should be in place to record all disciplinary information, including office referrals, detentions and in-school suspensions
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