

Administrators and IEP Process

David B. Hodgins

Thompson & Horton LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027

dhodgins@thompsonhorton.com
713-554-6745



ATTORNEYS | COUNSELORS

Preparation is Key—Provide Leadership

DO:

- Staff and communicate
- Make sure staff is prepared to make good recommendations, share student progress, and appropriately address any parental questions or concerns
- Understand the duty of FAPE



FAPE-Free Appropriate Public Education

How is FAPE determined?

Under *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S.176 (1982)

1. First, has the school district complied with the procedures set forth in the Act?
2. Second, is the individualized education program (IEP) developed through the Act's procedures, reasonably calculated to enable the child to receive educational benefits?



FAPE-Free Appropriate Public Education

How is FAPE determined?

Under *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 69 IDELR 174, (2017) (involving autistic student in self-contained class). Supreme Court clarified the FAPE standard.

1. The IEP must be “**reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.**” *Endrew F.*, 137 S. Ct. at 999. (Emphasis added)
2. 10th Circuit standard for FAPE that was one of “barely more than de minimis” is overturned
3. “The question is whether the IEP is reasonable, not whether the court regards it as ideal”



How is “Reasonably Calculated” to provide an “Educational Benefit” for FAPE Determined?

Under *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 70 IDELR 86, 117 LRP 27963, (8th Cir. 2017):

1. The 8th Circuit acknowledged that the district did not provide all instruction and assignments in Braille as the student's IEP required. However, it pointed out that most of the implementation failures related to short assignments the student could read with alternative aids and large print. Given that the student earned good grades in his general education and honors courses despite the implementation failures, the 8th Circuit held that the occasional lapses did not result in a denial of FAPE.



How is “Reasonably Calculated” to provide an “Educational Benefit” for FAPE Determined?

Under *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 70 IDELR 86, 117 LRP 27963, (8th Cir. 2017):

1. The 8th Circuit Courts interpretation aligned with the Supreme Court's more recent ruling in *Endrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017), that an IEP must be reasonably calculated to enable a student to make progress that is appropriate in light of his circumstances.
2. “[A] school need not maximize a student's potential or provide the best possible education at public expense.”



How is “Reasonably Calculated” to provide an “Educational Benefit” for FAPE Determined?

Under *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997):

1. The program is individualized on the basis of the student’s assessment and performance;
2. The program is administered in the least restrictive environment (LRE);
3. The services are provided in a coordinated and collaborative manner by the Key Stakeholders; and
4. Positive academic and non-academic benefits are demonstrated.



Additional Preparation Recommendations

DO NOT: Participate in or allow Predetermination

- *Deal v. Hamilton County Bd. Of Educ.*, 42 IDELR 109 (6th Cir. 2004).
- The Court concluded that though the parents were present at the IEP meetings, their involvement was merely a matter of form and after the fact, because the district had, at that point, pre-decided the student's program and services. It concluded the district's predetermination violation caused the student substantive harm and therefore denied him FAPE.



Additional Preparation Recommendations

DO NOT:

- Fail to warn/educate staff regarding clever e-mails
- Fail to warn/educate staff regarding inappropriate communications with parents



Understand Notice Requirements

- Written notice of meeting
- Indicates purpose, time, location
- Indicates who will be there
- Informs parents of their right to bring an individual with knowledge or special expertise



Confirm Key Participants



DO:

- Include all essential members - § 300.321:
 - Parent
 - Regular education teacher
 - Special education teacher
 - **School district representative**
 - Person who can interpret instructional implications of evaluation

Participants

DO:

- Make sure the correct teachers are present
 - At least one regular teacher of the child (is or may be participating in regular ed environment)
 - Gives input about general curriculum or from own class
 - Gives input from other regular ed teachers
 - At least one special ed teacher, or special ed provider, of the child



Representative of the School District Requirements (34 CFR § 300.321)

- Qualified to provide/supervise provision of special education instruction
- Knowledgeable about general curriculum
- Knowledgeable about availability of resources in the district
- Can commit district resources



2006 Interpretive comments related to 34 CFR § 300.321 regarding public agency representative in IEP team meeting

- A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets the requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided.
- Federal Register, Vol. 71, p. 46670 (August 2006)



IEP Team--Excusal

- Parents and the school district may jointly excuse an IEP team member from attending the meeting if service/curricular area will not be discussed.
- Parents and the school district may excuse an IEP team member even if service/curricular area will be discussed; the excused member must provide written input to the team.
- Agreement must be in writing and include parent consent.



IEP Team-Excusal

- OSERS, however, has noted that it may not be reasonable for the public agency to agree or consent to the excusal of the public agency representative. "For example, the public agency cannot consent to the excusal of the public agency representative from an IEP Team meeting if that individual is needed to ensure that decisions can be made at the meeting about commitment of agency resources that are necessary to implement the IEP being developed, reviewed, or revised,"
- if a public agency representative is excused from attending an IEP team meeting, the public agency remains responsible for implementing the child's IEP and may not use the excusal as a reason for delaying the implementation of the child's IEP.
Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations, 110 LRP 35823 (OSERS 06/01/10).



1st Few Minutes:



- DO identify consensus members
- DO establish an agenda (bring team back to task!)
- DO establish ground rules
- DO listen to parents' issues

During the Meeting

DO NOT:

- Ask persons to sign who were not there
- Let consensus members/decision makers leave before it is over (unless properly excused)
- Set artificial time limits
- Stop because there is a disagreement – finish the agenda
- Force staff to agree



During the Meeting

DON'T SAY:

- “We don’t have that program”
- “That is too expensive”
- “That program is not for children with this label”



During the Meeting

DON'T SAY:

- “You have to be in resource to get . . .”
- “No matter what the federal law says, we expel for that . . .”
- “We do not have the authority to make that decision . . .”



During the Meeting

DO:

- Listen to the parents
- Ask questions
- Continually check for understanding
- Identify any reevaluation to be done



Modifications/Accommodations

DO:

- Have a rationale and purpose
- Note frequency or triggering event
- Consider grade level changes
- If you write them, DO THEM



Modifications/Acommodations

DO NOT:

- Write AS NEEDED without clarification
- Check each modification for each class
- Check each one of last year's modifications
- Check only because the parent requests it



Minutes

- DO have a separate note taker
- DO make sure they are clear, complete and extensive
- DO document even if the meeting is tape recorded
- DO take the time to re-read and correct
- DO have everyone sign who has attended
- DO NOT ALTER AFTER THE FACT



At the End of the IEP Meeting

- DO verify agreement or disagreement
- DO NOT give in if the request is educationally inappropriate



After the IEP Meeting

- DO give parent and every teacher copies of the IEP, modifications and behavior plans
- DO give BIP to Assistant Principal
- DO document receipt
- DO ensure the IEP and modifications/ accommodations are followed and implemented



**Thank you for allowing
me to present!**

David B. Hodgins

© Thompson & Horton LLP

dhodgins@thompsonhorton.com



ATTORNEYS | COUNSELORS