

SPECIAL
EDUCATION
IN THE
SPRING
OF
2022

PRESENTED BY:

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LLP

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CAVEAT

- ❖ The information contained herein is up to date as of May 5, 2022.
- ❖ Please check our website regularly for up-to-date information: Vanaman German LLP
 - ❖ website at www.vanamangerman.com.

SCHOOL DISTRICT LEGAL OBLIGATIONS

- ❖ Districts are required pursuant to the Individuals with Disabilities Education Act (IDEA) to provide eligible students with a Free Appropriate Public Education (FAPE).
- ❖ The U.S. Supreme Court in *Endrew F. v. Douglas County School Dist. RE-1*, 580 U.S. ___ 137 S. Ct. 988 (Mar. 22, 2017) held that schools are required, under IDEA, to provide students with an education that is, “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (*Id. at 14-15*) and emphasized that, “every child should have the chance to meet challenging objectives.” (*Id. at 14*).

SCHOOL DISTRICT LEGAL OBLIGATIONS CONTINUED

- ❖ What is FAPE for each student will be based upon his/her assessed needs.
- ❖ Students are assessed initially to determine eligibility and then every three years to determine the student's continued eligibility
- ❖ The Individualized Education Program (IEP) sets forth the student's present levels of performance, goals and objectives based upon present levels, placement, accommodations/modifications, services and supports.
- ❖ IEP's are reviewed annually to determine the student's progress toward their goals and for the team to make an offer of FAPE.

WHAT WE KNOW FOR SURE

- ❖ Federal law has not changed. The Individuals with Disabilities Education Act (IDEA) remains in full force and effect.
- ❖ State law allowed for an exemption of time to conduct assessments, but that extension ended on July 1, 2020. Current state law does not provide districts with any extensions or exemptions from conducting timely assessments and holding IEPs.
- ❖ What is your district doing or not doing? Do they have a backlog of assessments? When was the last time your child was assessed? Does your district have current information regarding your child's educational needs?

LEGISLATION

- ❖ AB130 was signed by Governor Newsom on July 9, 2021 providing that all distance learning for the 2021-2022 school year would be provided by Independent Study (IS).
- ❖ No consideration for the needs of special education students leaving parents with a serious dilemma. If their child is immunocompromised or they live with someone who is and cannot safely return to in-person school the only choice was IS.
- ❖ ***EE v. California*** was brought on behalf of disabled students who are at higher risk of severe outcomes from COVID-19. The court determined that the State of California was discriminating against these students by failing to provide them with an appropriate education.
- ❖ Injunction granted. Current status.

NEW CASELAW

CAPISTRANO UNIFIED V. B.W.

- ❖ ***Capistrano Unified School District v. S.W. and C.W. on behalf of their minor child, B.W.***, Case Numbers 20-55961 and 20-55987. Has been certified for publication and will appear in the Federal Reporter.
- ❖ Involved a bitter dispute between the Capistrano School District and the family. Parents disagreed with IEP, withdrew B.W. from the district, placed her in private school, gave notice that they were placing her for first and second grade, and filed for Due Process seeking reimbursement for private school tuition.
- ❖ Capistrano denied reimbursement and proposed holding an IEP meeting, but parents didn't respond (said they didn't receive notice). Parents then agreed to Capistrano conducting an assessment of B.W. but they never produced her for the assessment.
- ❖ At administrative hearing, the ALJ held that the District denied B.W. a FAPE, failed to file for Due Process on the disputed IEP and failed to have an IEP in place for the second-grade year. Both sides appealed.

CAPISTRANO CASE CONT'D

- ❖ The District Court ordered Capistrano Unified School District to reimburse B.W.'s parents for the private school tuition for B.W.'s second-grade year. Capistrano appealed.
- ❖ The Ninth Circuit Court of Appeals held that because the parents had not requested an IEP for B.W. for the second grade, their claim for reimbursement was denied. Court said B.W.'s IEP for the first grade had expired (what??).
- ❖ Lesson from this case: Always request an annual IEP if your child is in private school due to a dispute regarding a FAPE!
- ❖ We do not yet know how the Office of Administrative Hearings (OAH) will interpret this case, but school districts are viewing it as a game changer.

REGRESSION

- ❖ Compensatory Education Services for a denial of a Free Appropriate Public Education (FAPE).
- ❖ Recoupment: Whose fault is it anyway? Does it even matter?
- ❖ LAUSD has developed a plan to address learning loss in all students due to the pandemic. All students will require tailored teaching to address learning loss.
- ❖ Students with disabilities may be able to address their learning loss through the same tailored instruction given to their general education peers. But, to the extent that their disability prevents them from recovering and recouping quickly, then students with disabilities may require additional instruction to continue making progress appropriate considering their circumstances.

HOW DO WE MEASURE REGRESSION?

- ❖ Parent documentation.
- ❖ Previous assessment results compared with new assessment results.
- ❖ Progress or lack thereof on goals and objectives.
- ❖ Documentation of what services/supports on the student's IEP were provided during shutdown and what services/supports were not provided as well as documentation indicating the student's ability to access those services.
- ❖ Services that could have reasonably been offered but were not during shutdown result in claim for compensatory education.
- ❖ Two-year statute of limitations from the time you became aware of the facts giving rise to the Due Process claim.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
RESOLUTION AGREEMENT WITH LOS ANGELES UNIFIED
SCHOOL DISTRICT

- ❖ January 21, 2021: Office of Civil Rights (OCR) opened investigation of LAUSD to determine if during the COVID 19 pandemic the District provided a Free Appropriate Public Education (FAPE) to each qualified student with a disability.
- ❖ OCR found: LAUSD, “limited the services provided to students with disabilities based on considerations other than the students’ individual educational needs, did not conduct evaluations of students with disabilities prior to making significant changes to their placements and did not ensure that the placement decisions were made by a group of persons knowledgeable about the students’ needs...”
- ❖ April 27, 2022, Alberto Carvalho entered into a Resolution Agreement with OCR.
- ❖ “Compensatory services are required to remedy any educational or other deficits that result from the student with a disability not receiving the evaluations or services to which they are entitled.”

RESOLUTION AGREEMENT BETWEEN OCR AND LAUSD

- ❖ Requires LAUSD to develop a plan for providing compensatory education for students who were impacted by remote learning during the pandemic (in addition to recoupment/compensatory procedures already in effect).
- ❖ Designate a plan administrator and develop a plan for compensatory education (Comp Ed) including criteria for determining if a denial of FAPE and what Comp Ed is appropriate, tracking through Welligent, district staff training and outreach to families and reporting requirements.
- ❖ Determinations to be made during IEP and 504 meetings as to whether student was denied FAPE during the pandemic by considering the requirements of the student's IEP or 504 plan, the frequency and duration of missed instruction and related services, whether what was provided was appropriate to meet the students needs, the students present levels of performance, previous progress, results of updated evaluations and whether evaluations were delayed.

RESOLUTION AGREEMENT BETWEEN OCR AND LAUSD, CONT'D.

- ❖ Parents have the right to copies of all documents and information recorded by the District regarding instruction and services that were provided including service logs.
- ❖ Parents have the right to dispute the determination made by the IEP/504 team as to what is appropriate Comp Ed for their child. Same dispute resolution procedures available including informal dispute resolution and Due Process.
- ❖ IEP/504 team must document the discussion of Comp Ed, whether or not a determination was made that the student requires Comp Ed and if so, details of the Comp Ed such as the amounts of each service, the time frame for providing the service and who the service provider will be.
- ❖ District must track and report all determinations to OCR quarterly.

BULLYING AND THE IDEA

❖ **Definition:**

- ❖ Aggression used within a relationship where the aggressor has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated.

❖ **Types of bullying:**

- ❖ Physical
- ❖ Psychological
- ❖ Social
- ❖ Cyber

❖ **Is bullying a denial of FAPE?**

❖ **School's obligations to students with disabilities**

- ❖ Child find
- ❖ IEP meeting

❖ **What can you do?**

- ❖ Gebser letter
- ❖ UCP Complaint
- ❖ Due Process

DISAGREEMENTS AND PATHS TO RESOLUTION

- ❖ DISAGREEMENTS AND PATHS TO RESOLUTION
- ❖ What happens when you disagree with what was offered at the IEP ? Note: You can Revoke Your Consent.
- ❖ Another IEP – Request in writing/ 30 days
- ❖ Alternative Dispute Resolution/ Informal Dispute Resolution – Faster But Beware of Waivers
- ❖ Due Process – Resolution Session/ Mediation/ Formal Due Process Hearing to Decision

DUE PROCESS: WHAT IS IT ?

- ❖ Due Process is an administrative remedy available to parents under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 to resolve disagreements between parents and schools regarding students with disabilities.
- ❖ Due Process comes from the Bill of Rights/ 5th Amendment and made applicable to ALL States in the 14th Amendment.
- ❖ No one shall be deprived of life, liberty or property without due process of law.
- ❖ This describes the legal obligation of ALL States to operate within the law and provide fair procedures. Protection from being deprived of an important interest.
- ❖ Education is an important interest.

WHY DUE PROCESS ?

- ❖ Due Process is a requirement under the IDEA to ensure children eligible for special education receive a free, appropriate public education.
- ❖ Parents have rights on behalf of their child under the IDEA and it is those rights that are being protected. Parents have an interest in their child being provided a FAPE.
- ❖ These are found in the Procedural Safeguards you receive, or should receive, at every IEP.
- ❖ Read them at least once.

THE PROCESS FOR DUE PROCESS

- ❖ Districts can file for Due Process to Defend their IEP offer. Parents, with or without an attorney can file for Due Process when there is a basis to believe that a child's right or interest to education was violated by a District which is a state operator.
- ❖ The matter can proceed directly to hearing with a stop along the way possibly with a Resolution Session and possibly with a mediation.
- ❖ RESOLUTION SESSION
- ❖ Intention, Mandatory but the District can waive.
- ❖ If you bring an attorney, the District can bring an attorney, but not fees under statute for attorneys.
- ❖ Alternatives to bringing your attorney.
- ❖ MEDIATION: Is it Worthwhile ? Mediation is voluntary – either party can decide not to participate.
- ❖ The majority of cases settled at the mediation stage and is worthwhile with some exceptions

DUE PROCESS HEARING

- ❖ Called a Hearing / It is a Trial
- ❖ Both sides present evidence.
- ❖ Evidence is comprised of Witnesses, Documents such as IEPs and Evaluations to Support Position
- ❖ Expert Witnesses Reimbursed for Time / Not reimbursable
- ❖ Administrative Law Judge Decides
- ❖ EXPEDITED DUE PROCESS
- ❖ Faster Timelines
- ❖ Discipline Issues Involved/ Quick Resolution Needed.
- ❖ OAH Decides

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMAL DISPUTE RESOLUTION (IDR)

- ❖ Intent: to maintain positive relationships by parents and LEA staff by working collaboratively toward solutions. Local Educational Agencies Given Federal Grant.
- ❖ State legislature / \$ 8,600,000 in the 2020 Budget Act in addition to the \$ 1,945,00 in ADR grants.
- ❖ Voluntary
- ❖ Cannot be used to delay the right to a due process hearing.
- ❖ Be Aware: Waivers

COMMON OTHER TYPES OF COMPLAINTS (not exhaustive)

- ❖ COMPLIANCE COMPLAINT – Parents File with CDE
 - ❖ <https://www.cde.ca.gov/sp/se/qa/cmpltproc.asp>
- ❖ OFFICE FOR CIVIL RIGHTS (OCR) COMPLAINTS
 - ❖ Within 180 Days of Discrimination OR 60 Days from School's Internal Grievance Procedure.
 - ❖ <https://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>

SETTLEMENT AGREEMENTS: WHAT YOU MUST KNOW AND HOW TO PREPARE

- ❖ Settlement agreements are contracts between you and the District.
- ❖ Read and understand the contract.
- ❖ Ask questions/ Get answers BEFORE you sign the "contract" aka Settlement Agreement.
- ❖ Settlement Agreement is a Road Map
- ❖ Advance preparation: gather all information including: school name, attendance records, school calendar/start and finish date, mileage from home to school and back, service provider name, service provider hourly rate, frequency of service, start/end date of service

TOOLS FOR SETTLEMENT AGREEMENT

- ❖ Make Friends With Technology (Ask a teenager)
- ❖ Scanner: No scanner ? No problem!
- ❖ Free Scanner Apps for Apple and Android / Free and Low Fee [Genius Scan/Jot Not/ Even Apple Notes for newer models]
- ❖ Printer: No Printer ?
- ❖ Most Los Angeles Public Libraries Have a Printer To Use
<https://www.printeron.com/printspots-directory.html>
- ❖ Highlighter/ Red Pen

WHAT TO LOOK FOR

- ❖ Most Settlement Agreements Look Back - "through the date of full execution"
- ❖ Agreements That Look Forward: "settles all claims through XXXX Date"
- ❖ Highlight the term and/or date
- ❖ Write down what YOU Agreed to.
- ❖ Write down what the District agreed to.

REIMBURSEMENT

- ❖ If Reimbursement is a term of the agreement, what do you need ? Reimbursement Forms:
- ❖ Tuition Reimbursement /Attendance Records; Mileage Reimbursement/ Mileage Forms [know mileage to and from school from home]
- ❖ Must Prove Expenses/Documentation of Payment
 - ❖ Redacted Bank Statements/Cancelled Checks/Redacted Credit Card Statements/Credit Card Receipts.
- ❖ Print Out Third-Party Tuition / Get the name !!
- ❖ **MUST KNOW TIME FRAME FOR SUBMISSION:** Business Days vs. Calendar Days
- ❖ <https://www.timeanddate.com/date/dateadd.html>
- ❖ Proof of Submission

INTERPRETATION/TRANSLATION

- ❖ Under the IDEA and California law, certain documents must be translated into a parent/guardian's native language:
 - ❖ Procedural safeguards (20 U.S.C. § 1415(d)(2).)
 - ❖ IEPs, upon request of the parents. (5 C.C.R. § 3040)
 - ❖ Information relevant to an activity for which an LEA is seeking a parent's consent, (34 CFR § 300.9(a).)
- ❖ Interpretation at IEP meetings: The local educational agency shall take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English. (Cal. Ed. Code Sec. 56341.5(i))
 - ❖ Does it have to be a qualified/certified interpreter?
- ❖ Timeline for IEP translation? What about assessments?