

**SPECIAL EDUCATION  
LEGAL UPDATE: 2015**

Presented by:  
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**ADA/Section 504**

- Many suicide cases. Parents bear a high burden of proof.
- Service Animals—get ready for them!
- “Effective Communication” standards in flux.
- Accommodations are designed to level the playing field—not provide an unfair advantage.

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**Attorneys’ Fees**

- Parents who “prevail” are entitled to recover reasonable fees.
- District can limit its exposure with an offer prior to the hearing.
- Attorneys are expected to play nice.

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## Bullying/Harassment

- It should not be hard to prove that the district was not “deliberately indifferent.”
- But don't rely only on REACTIONS to bullying. What are you doing PROACTIVELY?
- Make a list of “things not to say” about bullying, and put “there's nothing we can do to stop it” on the list.



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## Discipline: I

- The focus on racial disproportionality is just one reason many schools are turning toward RESTORATIVE PRACTICES.
- Schools can do some things unilaterally—short term removal; removal due to “special circumstances.”
- Other steps require IEP Team approval (change of placement) or court order (safety issues).



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## Discipline: II

- Teachers with personal experience with the student have a lot of credibility on the manifestation determination.
- Special ed discipline is a two-step process. First, administrators determine that the student violated the Code of Conduct. Second, IEP Team makes MDR.
- Parent can appeal either decision, but the route of appeal is different.



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## Eligibility

- You are eligible if you 1) have a disability that 2) has an "adverse effect" on your education 3) to the point that you NEED specially designed instruction.
- These terms are ambiguous, murky, subjective.
- Don't automatically exclude kids with high IQs and good academic records.



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## Evaluations

- OSEP: Parent can request IEE in area not evaluated by district.
- Parents cannot impose unreasonable restrictions on consent for evaluation.
- Remember: evaluation data is the foundation for all decisions regarding IEP content and placement.



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## Exhaustion of Administrative Remedies

- Toss this term around and impress your lawyer!



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## FAPE

- Some courts say “meaningful” benefit. Others say “some” benefit.
- Leave this hair splitting to the lawyers. Your job is to make it meaningful.



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## IEEs

- When parent requests IEE, you either provide it or ask for hearing to show that your evaluation is appropriate.
- And do it promptly.
- You can impose reasonable restrictions on IEEs re: cost, credentials and distance.



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## IEPs

- Make sure teachers know that they do not have “unilateral” power to change the IEP.
- Neither does the principal.
- The Lolita case: NCLB vs. IDEA.
- Districts are liable for “failure to implement” only when the failure is significant, and attributable to the district.



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## IEP Team Meetings

- Sometimes the absence of a general ed teacher is legally significant; sometimes it is not.
- Take no chances. Get the teacher to the meeting.



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## Liability

- Clark County case shows the typical outcome in a physical abuse case—no liability unless you were personally involved.
- Locked school bus case shows that in many states, districts cannot be held liable based on “negligence.” Thus suits are brought under federal law with higher standards of liability.



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## Parental Rights/Responsibilities

- Parents may not have a “right” to observe in the classroom, but they do have the right to be treated equally with other parents.
- Restrictions imposed by the school must be fair, equal, and equally enforced.



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## Placement

- "Pre-Determination" continues to be the buzzword.
- Be sure your records reflect a consideration of multiple options.
- Decide placement only AFTER coming to consensus on the content of the IEP.
- Residential placement must be based on educational need.



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## Practice and Procedure

- Hearing officers can (and should) control the hearing. This includes enforcing reasonable time limits.



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## Private School Students

- If they attend a private school in your district, you are expected to "find" them.
- So get in touch with those private schools.



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## Related Services

- Make sure the services are free to the parent.
- Relying on parent to provide transportation is generally not the best option. Notice in the Ruby case that this was a temporary arrangement only, while the district upgraded its regular bus service.



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## Remedies

- Suits these days often allege violations of IDEA, 504, ADA, Section 1983, Constitutional standards and/or state law.



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## RTI

- Remember that there is an inevitable natural tension between RTI and Child Find.
- The key is documentation of 1) student progress; and 2) communication with parents.



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## State Responsibility

- There is no “burden of proof” in a complaint process.



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## Transition

- Be sure that you can show how you took into account the student’s preferences and interests.
- “Transition” is one of those words that have a legal definition that differs from the dictionary definition.



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## Unilateral Placement/ Tuition Reimbursement

- Watch for increase in cases involving schools that serve only students with disabilities.
- Parents must give notice in time for the school to address their concerns.



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## Miscellaneous But Interesting

- Think through all the legal issues with classroom recording.
- Remember that parents can revoke consent, even when you think it's a bad idea.
- Filing a child abuse report may be viewed as an "adverse action," thus opening the door to personal liability.
- How well do you ride a bike?



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