

WHAT CONSTITUTES A FREE APPROPRIATE PUBLIC EDUCATION?
Summary of Relevant Legal Interpretations

- The Individuals with Disabilities Education Act (IDEA) requires “a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21” (IDEA§300.101). A free appropriate public education (FAPE) means special education and related services that are provided at public expense and in conformity with an individualized education program (IEP) that has been developed in accordance with §300.320 through §300.324 (IDEA§300.17).
- In the seminal case on the issue, *Board of Educ. v. Rowley*, 458 U.S. 176 (1982), the Supreme Court held that “if personalized instruction is being provided with **sufficient supportive services to permit the child to benefit from the instruction** . . . the child is receiving [FAPE] as defined by the Act.” *Id.* at 189. The school district need not maximize the child's potential in order to confer educational benefit to the child. *Id.* at 204. Rather, the IEP must only confer educational benefit. *Id.*
- The Tenth Circuit Court of Appeals has consistently applied the *Rowley* standard and found that **as long as the child is receiving educational benefit from his IEP, the school has met the substantive provisions of FAPE**. For example, in the recent case of *Thompson R2-J School District v. Luke P.*, 540 F.3d 1143 (10th Cir. 2009), the court reiterated that the standard set forth by the United States Supreme Court in *Rowley* still applies despite the recent amendments enacted by the IDEA. The Tenth Circuit stated:

Under that standard we must ask whether [the child's] IEP was “reasonably calculated to enable [him] to receive educational benefits.” If the IEP was so calculated, the school district can be said to have provided a FAPE; if not, then not.

Quoting *Rowley* at 207), the Tenth Circuit continued stating:

The Supreme Court has further explained that this standard is not an onerous one. “Congress did not impose upon the States any greater substantive educational standard than would be necessary to make . . . **access meaningful**.... [T]he intent of the Act was more to **open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside**.” So, for example, the Court found no support in the text or history of the Act for the proposition that Congress sought to guarantee educational services sufficient to “maximize each child's potential.” Instead, we are told, Congress sought only to require a “‘basic floor of opportunity,’” **aimed at providing individualized services sufficient to provide every eligible child with “some educational benefit.”**

- It is also important to recognize that pursuant to binding Tenth Circuit precedent, “primary responsibility for formulating the education to be accorded a handicapped child, and for **choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child.**” *Urban ex rel. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 727 (10th Cir.1996). Finally, precedent instructs that: “‘the measure and adequacy of an IEP can only be determined as of the time it is offered to the student.... Neither the statute nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child's placement.’” *Luke P.*, 540 F.3d at 1149 (quoting *O'Toole ex rel. O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 144 F.3d 692, 701-02 (10th Cir.1998)).
- In addressing procedural errors, the legal standard is critical. In *Johnson ex rel. Johnson v. Olathe Dist. Schools Unified School Dist. No. 233*, 316 F.Supp.2d 960 (D. Kan. 2003), the court stated:

Technical deviations from the procedural requirements of developing an IEP do not automatically lead to the conclusion that the IEP is invalid. Rather, “‘**there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.**’” *Id.* (quoting *O'Toole*, 144 F.3d at 707 (quoting *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990)).

Thus, minor procedural inadequacies alone do not result in a denial of FAPE. In this case, **even though there were clearly procedural deficiencies, those defects clearly did not result in a denial of FAPE to the student or seriously hamper the parents' opportunity to participate in the formulation of their child's IEP.**

QUESTIONS FOR DISCUSSION

1. As your school district prepares for the impending budget cuts, what are you doing to proactively prepare to parents' concerns that their child is not receiving FAPE? How are you sharing information with school teams? Do you think FAPE will be jeopardized?
2. As you begin planning your budget for next year, how are you reducing projected expenditures? Share some of the "big ticket items" that you are planning to reduce or eliminate?
3. Who in your district have you had a conversation about the IDEA budget cuts? Has your Business Manager or Superintendent offered to help supplement your budget cuts through other funding sources?
4. How do you expect the pending budget cuts to impact the schools? How do you plan to prepare schools, teachers, and other staff for the changes (both formally and informally)?
5. Beyond the IDEA sequestered cuts, what other budget concerns are you currently facing?
6. Other thoughts, suggestions, or "big ideas" that the rest of us could benefit from?