



SPECIAL EDUCATION STORY TELLING: THE HARD WORK

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TELL THE WHOLE STORY!

- Every story has a beginning, middle and end.
- Skip NOTHING!
Every section of an IEP is important.
- Prior Written Notice is the **CONSTANT COMPANION** of the IEP process.



WHAT IS THE BEST STORYTELLING TOOL IN SPECIAL EDUCATION?

Prior Written Notice pursuant
to 34 C.F.R. §300.503.

PRIOR WRITTEN NOTICE

Purpose:

- It is an alert to parents of the following:
 - A change is about to take place, or
 - The school has proposed to do something different, or
 - The school has refused their request, and
 - The parent's now have the right to object to the district's proposal or refusal.



PRIOR WRITTEN NOTICE

- Must be given to parents a reasonable time before the public agency:
- Proposes to initiate or change the IDENTIFICATION, EVALUATION, OR EDUCATIONAL PLACEMENT, OR THE PROVISION OF FAPE, or
- Refuses to initiate or change the IDENTIFICATION, EVALUATION OR EDUCATIONAL PLACEMENT, OR THE PROVISION OF FAPE.

PRIOR WRITTEN NOTICE

- Contents of the Notice:
 - Description of the action proposed or refused by the agency;
 - An explanation of why the agency proposes or refuses to take the action;
 - A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - A statement of the parent's procedural safeguards;
 - Sources for the parents to contact;
 - A description of other options considered and why those options were rejected; and
 - A description of other relevant factors.

PRIOR WRITTEN NOTICE

- Every time you **propose to:**
 - Evaluate a student
 - Amend and IEP
 - Change a placement
 - Change eligibility
 - Change FAPE
- Every time you **refuse to:**
 - Evaluate a student
 - Amend and IEP
 - Change a placement
 - Change eligibility
 - Change FAPE

COMPREHENSIVE EVALUATION

- The beginning of a GREAT IEP!
 - Determine eligibility
 - AND
 - Determine needs

PART B

- Each public agency must conduct a **full and individual initial evaluation** before the initial provision of special education and related services.
- *See 34 C.F.R. §300.301.*

INITIAL EVALUATION

- The public agency must ensure that the child is assessed in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- *See 34 C.F.R. §300.304(c)(4).*

COMPREHENSIVE REQUIREMENT

- In evaluating a child with a disability, the public agency must ensure that the evaluation is **sufficiently comprehensive to identify all of the child's special education and related service needs**, whether or not commonly linked to the disability category in which the child has been classified.
- *See 34 C.F.R. §300.304(c)(6).*

REEVALUATION

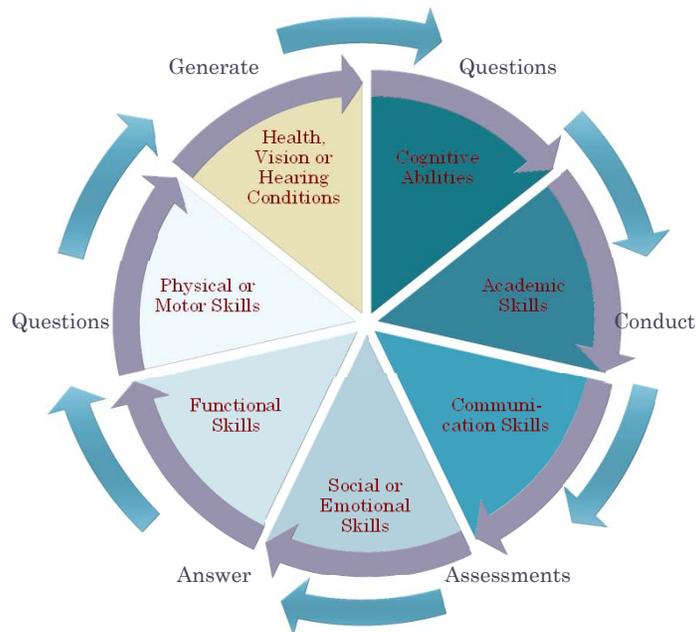
- A reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311.
 - If the school determines that educational or related services needs, including improved academic performance, of the child warrant a reevaluation, or
 - If a child's parent or teacher request a reevaluation.
- See 34 C.F.R. §300.303(a).*

REEVALUATION

“Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation.”

71 Federal Register 46640.

Comprehensive Evaluation: Eligibility & Need



ELIGIBILITY

- Upon completion of the administration of assessments and other evaluation measures
 - Determine whether the child is a child with a disability, **and**
 - **Determine the educational needs of the child.**

WHAT IS. . .

Special Education

- Means **specially designed instruction**, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and other settings.
- *See 34 C.F.R. §300.39(a).*

Related Service

- 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.**
- *See 34 C.F.R. §300.34.*

WHAT IS SPECIALLY DESIGNED INSTRUCTION?

- Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction **to address the unique needs of the child that result from the child's disability**, and ensure access to the general curriculum.



The Story Continues . . .

ONCE ELIGIBLE . . .

- A child has a right to FAPE in the LRE as described in the IEP.
 - FAPE: Defined by the United States Supreme Court to mean special education and related services that are **reasonably calculated to provide educational benefit** to the child.
 - LRE: To the maximum extent appropriate children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
 - *See 34 C.F.R. §§300.114 through 300.117*

THE IEP

- If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child.
- *See 34 C.F.R. §300.306(c)(2).*



Content of the IEP story is described
in §§300.320 through 300.324.

PRESENT LEVELS

- A statement of the child's present levels of academic achievement and functional performance, including –
 - How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children), or
 - For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

MEASURABLE ANNUAL GOALS

- A statement of measurable annual goals, including academic and functional goals designed to –
 - Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum, and
 - Meet each of the child’s other educational needs that result from the child’s disability.
- For children taking alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

SPECIAL EDUCATION AND RELATED SERVICES

- A statement of the special education and related services, and supplementary aids and services, and
- A statement of the program modifications or supports for school personnel that will be provided to enable the child –
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
 - To be educated and participate with other children with disabilities and nondisabled children in the activities described above.

MEASURABLE GOALS LEAD TO MEASURING PROGRESS

- 34 C.F.R. §300.320(a)(3) requires that every IEP include a description of: --
- How the child's progress toward meeting the annual goals will be measured, and
- When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

WRITING SMART GOALS

“SMART” stands for

- **Specific,**
- **Measurable,**
- **Achievable,**
- **Results Orientated & Relevant, and**
- **Time-bound.**

THE STRANGER TEST

- **The Stranger Test refers to goals and objectives for students that are described in a fashion that a person unfamiliar with the student could read the description and understand it. Because various persons involved in the implementation of a student's educational plan may interpret a construct such as "hostility" differently, it is necessary to describe student behavior in terms that would pass the Stranger Test.**

ANNUAL GOALS HELP SHEET

Annual goals are expectations based on assessed special education needs. Annual goals are reasonably achievable within one calendar year. Goals have five components.

- 1. Direction of change;**
- 2. Deficit or excess;**
- 3. Present level of performance;**
- 4. The expected annual ending level of performance;**
and
- 5. Resources needed to accomplish the expected level of performance.**

ANNUAL GOALS HELP SHEET

1. Direction of change can be stated as:
 - Increase (reading comprehension, math computation, written expression, speech fluency, etc.)
 - Decrease (math errors, temper tantrums, verbal aggression, etc.)
 - Maintain (motor control, a skill learned, etc.)

ONCE THE GOAL IS WRITTEN,
HOW DO YOU TELL THE
“PROGRESS” PART OF THE STORY?



REPORTING PROGRESS

- Data
 - AND
- Narrative

TELL THE STORY!

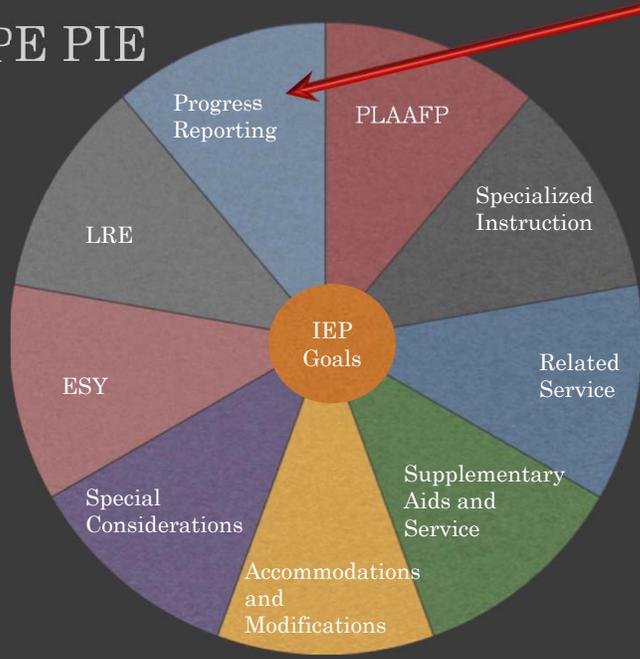


Time to get your
ducks (chicks) in
a row!

MEASURING PROGRESS

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FAPE PIE



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MEASURING PROGRESS

- The 6th Circuit held that measurable goals must have "sufficiently objective criteria" for measuring progress.
 - *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), aff'd, 38 IDELR 63 (6th Cir. 2003).
- An IEP's statement that a student would "improve his functional academic skills from a level of not completing assignments independently to a level of being able to read, write and do basic math skills independently" was too vague to permit measurement of the student's progress.
 - *Independent Sch. Dist. No. 701 v. J.T.*, 45 IDELR 92 (D. Minn. 2006).

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PROGRESS VS. MASTERY

- A student's inability to perform at grade level does not indicate a denial of FAPE when a child makes progress commensurate with her abilities.
 - *Walczak v. Florida Union Free Sch. Dist.*, 27 IDELR 1135 (2nd Cir. 1998).
- Similarly, a student's failure to meet his IEP goals does not establish a denial of FAPE when the student is making progress toward his goals.
 - *Schroll v. Board of Educ. Champaign Community Unit Sch. Dist. #4*, 48 IDELR 155 (C.D. Ill. 2007).

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IF PROGRESS MEANS EDUCATIONAL BENEFIT,

- What does a lack of progress mean?
 - If a student fails to make progress within a reasonable period of time, the district must convene an IEP meeting to address the student's lack of progress. A district's continuation of inadequate services will almost certainly be regarded as a denial of FAPE.
 - *District of Columbia Pub. Schs.*, 49 IDELR 267 (D.D.C. 2008).

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LACK OF PROGRESS PROCEDURAL STEPS

1. Review the IEP and confirm implementation.
2. Convene the IEP team to review the lack of expected progress, or
3. Amend the IEP by agreement, if appropriate.
4. Recalibrate instructional practices to match changes.
5. Measure Progress.

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LACK OF PROGRESS SUBSTANTIVE CONSIDERATIONS

- Evidence Based!
- Documentation must evidence *meaningful educational benefit*, or support the teams effort to implement the 4 Rs: RECONVENE, REVIEW, RESTRATEGIZE, AND REVISE!

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THE ROWLEY STANDARD

- In 1982, the United States Supreme Court articulated the standard for determining whether an educational program is appropriate.
- The Court termed a school district's obligation as the provision of a "basic floor of opportunity."
- In other words, an IEP must be **reasonably calculated** to provide educational benefit.
- *Board of Education of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

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THE ROWLEY 2-PART TEST:

1. Has the district complied with the procedures set forth in the IDEA?
 - **AND**
2. Is the IEP developed through the IDEA's procedures reasonably calculated to enable the child to receive educational benefits?
 - *****
 - If this 2 part test is satisfied, the district has met its obligation.

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BASIC FLOOR OF OPPORTUNITY

- In Rowley, the Supreme Court made it clear that IDEA does not require provision of the best possible education.
- Referring to the minimal level of benefits that an appropriate educational program must confer, the Court termed the state's (and district's) obligation as being the provision of a "basic floor of opportunity."

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SOME EDUCATIONAL BENEFIT

- The 10th Circuit Court of Appeals has adopted the “some benefit” standard that the United State Supreme Court adopted in the *Rowley case*.
- *Sytsema v. Academy Sch. Dist. No. 20*, 50 IDELR 213 (10th Cir. 2008).

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MEANINGFUL, NOT TRIVIAL BENEFIT

- The 3rd Circuit held that IDEA "calls for more than a trivial educational benefit" and requires an IEP to provide "significant learning" and confer "meaningful benefit."
 - *Polk v. Central Susquehanna Intermediate Unit 16*, 441 IDELR 130 (3rd Cir. 1988), *cert. denied* 488 U.S. 1030 (1989).

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ARE GOOD GRADES ENOUGH?

- Achievement of passing grades and advancing from grade to grade in a regular classroom environment is not necessarily an indication that the student is receiving FAPE under the IDEA.
- An evaluation of the student's circumstances as a whole is still required.
 - *Hall v. Vance County Board of Education*, 557 IDELR 155 (4th Cir. 1985).

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GOOD GRADES

- In *Rowley*, the Supreme Court held that a student's ability to earn passing marks and advance from grade to grade is a strong indicator that he received a meaningful educational benefit.
- *Rowley* addressed the student's performance in the general education classroom.
 - *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982).

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GOOD GRADES

- When high grades are achieved in classes with only special education students set apart from the regular classes of a public school system, the grades are of less significance than grades obtained in regular classrooms.”
- “Overall, we think that it is clear that a court should not place conclusive significance on special education classroom scores, a conclusion that we believe is reinforced by the circumstance that, as here, there may be a disconnect between a school's assessment of a student in a special education setting and his achievements in that setting and the student's achievements in standardized testing.”
- “When there is such a disconnect we think that there should be an especially close examination of the appropriateness of the student's education.”
 - *D.S. and A.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3rd Cir. 2010).

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FAILING GRADES

- Just as passing grades do not always establish the provision of FAPE, failing grades do not always indicate a denial of FAPE. The amount of appropriate regular education progress, in terms of passing grades and grade-to-grade advancement, necessarily depends upon the abilities of each individual student with a disability.
 - *Carter v. Florence County Sch. Dist. 4*, 18 IDELR 350 (4th Cir. 1991), *aff'd*, 20 IDELR 532 (U.S. 1993).
- Some children, due to the extent of their disabilities, will never be able to perform at grade level and will require several years to achieve what would be to a nondisabled child a year's worth of progress.
 - *Conklin v. Anne Arundel County Bd. of Educ.*, 18 IDELR 197 (4th Cir. 1991).

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REMEMBER THE 4 RS

- RECONVENE,
- REVIEW,
- RESTRATEGIZE,
AND
- REVISE!



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IEP AMENDMENTS

- Changes to the IEP may be made either by the entire IEP team at an IEP meeting , or by amending the IEP rather than by redrafting the entire IEP.
- *See 34 C.F.R. §300.324(a)(6).*

IEP AMENDMENTS

- In making changes to a child's IEP **after the annual IEP meeting for a school year**, the parent and the school may **agree** not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.
- *See 34 C.F.R. §300.324(a)(4) and (6).*

TELL THE STORY BY . . .

- Documenting the amendment, **and**
- Issuing Prior Written Notice.

Once upon a time, there was.....

IN CONFORMITY WITH THE IEP

- Once an IEP has been drafted and implemented, services must be provided.
- Although not a guarantee of performance, it serves as a quasi-contract for services.
- Districts will be held accountable for the services in an IEP.

SUMMARY

- Tell the child's **WHOLE** story. Leave out nothing.
- Use Prior Written Notice liberally and frequently.
- Measurable goals lead to measurable progress.
- Document, document, document.

THE END

Thank you!

