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DUE PROCESS HEARINGS

Medical Provider Input into IEP Team Process

An IEP team must consider all relevant information provided by the parents regarding the needs of a student with disabilities. Such relevant information can include doctor input. While all relevant input from medical professionals must be considered by the IEP team, it is a team decision regarding what services are needed to provide a free appropriate public education (FAPE) to each child. [READ MORE](#)

Transportation and Compensatory Education

Compensatory education, consisting of educational services and/or related services, including transportation, may be ordered by a hearing officer as a remedy when a student has been denied a free appropriate public education (FAPE). The compensatory education is designed to provide the services that the student should have received had the student not been denied FAPE. [READ MORE](#)

COMPLAINT INVESTIGATION FINDINGS

Requirement to Consider PBIS

IEP Teams have an obligation to consider Positive Behavioral Supports and Interventions (PBSI) whenever the behavior of a student impedes the student's learning, or the learning of others. A student's behavior does not have to be disruptive to have an impact on a student's learning. [READ MORE](#)

Obligation to Protect Confidentiality of Student Records

Idaho school districts have an obligation to protect the confidentiality of student records, as required by the Family Educational Rights and Privacy Act (FERPA). Parents have the right to review their child's education records. Several complaint investigators addressed confidentiality of student records, with one investigator reviewing what documentation must occur whenever the parent brings a third party to a meeting with staff and information from education records is discussed. Another investigator reviewed when education records may be released to law enforcement. [READ MORE](#)

OFFICE FOR CIVIL RIGHTS

Section 504 and Website Accessibility

In the past few years, school districts and other public education entities across the United States have received notification letters from the Office for Civil Rights (OCR) alleging that all or portions of their website pages are inaccessible to individuals with disabilities. All public schools and school districts fall within the purview of Section 504 and Title II of the Americans with Disabilities Act and should be proactive in reviewing their website pages to determine whether they meet the Web Content Accessibility Guidelines (WCAG) standards for access by individuals with disabilities. All necessary corrections needed to make website pages fully accessible to individuals with disabilities should occur as soon as possible. [READ MORE](#)

DUE PROCESS HEARINGS

Medical Provider Input into IEP Team Process

An IEP team must consider all relevant information provided by the parents regarding the needs of a student with disabilities. Such relevant information can include doctor input. While all relevant input from medical professionals must be considered by the IEP team, it is a team decision regarding what services are needed to provide a free appropriate public education (FAPE) to each child.

- Student v. Blackfoot School District #55, H-16-12-21a (Feb. 15, 2017)

Summary of Facts: The parents of a child with Rett's Syndrome requested a hearing officer compel the District to provide fluid hydration to the Student by using an oral syringe. The parents argued that the District should follow the doctor's orders for the use of an oral syringe and that failure to do so jeopardized the Student's health in violation of the Individuals with Disabilities Education Act (IDEA).

The District objected to the use of an oral syringe for fluid hydration because of a concern about the procedure and a lack of training from the Student's care providers. The District provided fluid hydration to the student by use of a straw when also providing food. The District relied on the results of a Swallow Study conducted by District staff, which expressed concerns about possible risk of aspiration by the Student when utilizing the oral syringe to provide fluid hydration. The District also argued that the method of fluid hydration used by staff with the Student did not result in a violation of the IDEA.

Hearing Officer Findings: Both the oral

syringe and the straw were calculated to place fluid in the Student's mouth; the Student then had to swallow the fluids. There was no evidence that the Student was not receiving adequate hydration using the District's method, nor did the Parent show that the District's method of fluid hydration was inadequate or less appropriate than the Parent's method.

- Student v. Oneida School District No. 351, H-16-09-21A (Jan. 31, 2017)

Summary of Facts: The 12-year-old Student was in the 7th grade and was diagnosed with Duchenne Muscular Dystrophy, a disease that causes continual deterioration. The Student was confined to a motorized wheelchair and received significant assistance with all basic daily living activities. The Student attended schools in the district since Kindergarten and received aide services from two part-time aides. As the school district was on a 4-day week, each aide assisted the student two days per week. For a few weeks in September 2015, one of the female aides was reassigned to other duties, and the other female aide provided full-time assistance to the student.

At the IEP meeting on September 25, 2015, the team discussed the reassignment of one of the female aides and discussed possibly replacing a female aide with a male aide. The parents disagreed with such a proposal and requested that a certain female aide be assigned as the full-time aide for the Student. The Student's physician wrote a letter stating that the Student would benefit from consistency in the caregivers who provided services to the student. The IEP team declined the parents' request and a male aide was hired around November 7, 2015. A facilitated IEP team meeting was held on December 8, 2015, at which time the parents informed the district that the Student would begin attending school

on a part-time basis, apparently because of the District's denial to hire the requested female aide on a full-time basis.

Hearing Officer Findings: The Student's IEP did not specify whether aide services should be provided by one or more aides. The hearing officer determined that [t]he issue of whether to use one or multiple aides is a question of methodology of implementing the IEP." The "methodology or policy question for implementing aide services under the IEP is a decision for the District to decide." The hearing officer placed little weight on the letter from the doctor, as neither the doctor nor his assistant testified at the hearing, the letter was based solely on information received from parents, the letter's wording was ambiguous, and

"it is the responsibility of the IEP team, not the doctor, to develop and implement the IEP."

Transportation and Compensatory Education

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- Student v. Cassia School District No. 151, H-15-10-07 (Feb. 22, 2016)

Summary of Facts: For an entire school year and part of another, a Student was placed on the bus to go home in the afternoons 15 to 20 minutes earlier than other students. The total

amount of time the Student missed at school due to the busing schedule was 51.25 hours. The Student's IEP did not indicate that the Student should leave school earlier than other students. The Student's parents asserted that the shortened schedule deprived the Student of FAPE.

Hearing Officer Findings: The hearing officer reviewed whether the procedural violation of placing the Student on the bus earlier than other students was a denial of FAPE. The hearing officer concluded, "[b]y picking [] up early for the bus ride home, [] was deprived of 15-20 minutes a day of instructional time in the classroom. Instructional time in the classroom is an educational benefit. This deprivation of this educational benefit to [] is a violation of the IDEA and a denial of FAPE." The hearing officer ordered hour-for-hour compensatory education of 51.25 hours to be provided to the student over a two-week period. The compensatory education was required to be based on the student's then-current IEP goals.

COMPLAINT INVESTIGATION FINDINGS

Requirement to Consider PBIS

IEP Teams have an obligation to consider Positive Behavioral Interventions and Supports (PBIS) whenever the behavior of a student impedes the student's learning, or the learning of others. A student's behavior does not necessarily have to be disruptive to have an impact on a student's learning.

C-17-03-22a: An Idaho school district implemented a school-wide PBIS program in a school where a Student with behaviors attended. While staff modified certain components of the school-wide PBIS program to address the Student's behaviors, the school

failed to convene an IEP Team meeting to discuss the behaviors. Further, the IEP team did not discuss conducting a functional behavioral assessment (FBA) or implementing a Behavioral Intervention Plan (BIP) to address the behaviors, even though the evidence showed the Student had behaviors that impeded his learning. The complaint investigator found that the “[m]odifications to the school-wide PBIS program for the student should have been discussed with the IEP Team, including the Complainant and the Parent. Changes should have been documented on the IEP, most appropriately in a BIP.”

C-17-06-15a: An Idaho school district did not consider a particular Student to be a behavior problem because the Student did not have outbursts in class or disrupt other students’ learning. However, the Student had certain behaviors, including not completing his work, giving up easily, not taking advantage of adult support, and was overall disengaged in the learning process. The complaint investigator found that while

“the Student did not disrupt peers from learning, his behavior had a negative impact on his own learning as evidenced by failing grades and the resulting grade-level retention.”

“Positive behavior interventions, supports and other strategies are not automatically mandated because the student is on an IEP. However, in this case, the IEP team should have considered positive behavior interventions and supports when the impact of the Student’s behavior on his learning in general education

classes became apparent.”

COMPLAINT INVESTIGATION FINDINGS

Obligation to Protect Confidentiality of Student Records

Idaho school districts have an obligation to protect the confidentiality of student records, as required by the Family Educational Rights and Privacy Act (FERPA). Parents have the right to review their child’s education records. Several complaint investigators addressed this issue, with one investigator reviewing what documentation must occur whenever the parent brings a third party to a meeting with staff and information from education records is discussed. Another investigator reviewed when education records may be released to law enforcement.

C-16-12-20a and 20b: A student’s Spanish immersion teacher and general education teacher met with the parent and the student’s mental health case manager. During the meeting, the student’s IEP services and location for those services were discussed. The complaint investigator found that “[w]ritten parental consent was necessary before the discussion occurred with the Mental Health Case Manager.”

C-17-05-26a: Personally Identifiable Information (PII) may not be released to others without prior written parental consent, unless an exception applies. FERPA permits school personnel to release PII without prior written consent under particular circumstances, including when the disclosure is in connection with a health or safety emergency. In this case, law enforcement was called when a student eloped from school grounds. Staff disclosed the

student's name and general concerns based on the student's eligibility for special education services. The complaint investigator determined the release of information to law enforcement was reasonable, particularly since the student failed to respond to verbal requests by staff. The health or safety emergency exception applied to the situation.

OFFICE FOR CIVIL RIGHTS

Section 504 and Website Accessibility

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- [Madison \(ID\) Sch. Dist. No. 321 10-17-1093 \(OCR 5/5/17\)](#)
- [Idaho Educational Services \(ID\) for the Deaf and Blind 10-16-4039 \(OCR 1/19/17\)](#)
- [Butte Co. Sch. \(ID\) Dist. No. 111 10-17-1045 \(OCR 1/19/17\)](#)
- [Idaho \(ID\) Department of Education 10-16-1094 \(OCR 6/2/16\)](#)

Summary of Facts: Two Idaho school districts, the Educational Services for the Deaf and Blind agency and the Idaho Department of Education recently received complaints from the Office for Civil Rights (OCR), alleging that their websites were discriminatory based on disability, because certain website pages were not accessible to persons with disabilities. Both Section 504 and Title II of the Americans with Disabilities Act (Title II) prohibit public entities from excluding qualified persons with disabilities from participation in, being denied them the benefits of, or otherwise subjecting them to discrimination in its programs and activities based on disability. Persons with disabilities must be afforded equal access to all programs, services or activities, and must be provided with communications, which are as effective as communications with others, unless a public entity can show that such access would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden.

“In sum, programs, services, and activities – whether in a ‘brick and mortar,’ on-line, or other ‘virtual’ context – must be operated in ways that comply with Section 504 and Title II.”

The web pages alleged to be out of compliance for each of the four entities included their home pages. OCR conducted preliminary examinations of the web pages, found possible compliance concerns, and determined that there may be barriers on the identified web sites that deny persons with disabilities access to programs, services, and activities and which may impede communication with persons with disabilities. For example, certain web pages had photographs without “alt tags” describing their content, insufficient color contrast, pdf documents that were inaccessible to screen

readers, and a drop-down menu that was not visible to screen reader users.

Resolution Agreements: Each public entity entered into a Resolution Agreement with OCR. Each agreement set forth specific compliance timelines and agreed that accessibility of online contents and functionality will be measured according to the W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative-Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 techniques for web content.

In addition, the four public entities each agreed to provide OCR with proposed policies and procedures, retain an approved qualified auditor to review all existing content and functionality on the websites and identify all website content that is inaccessible to persons with disabilities, meet specific reporting requirements, provide a proposed Corrective Action Plan to address all inaccessible content and functionality identified in the audit, and provide annual website accessibility training to appropriate personnel.

Idaho Special Education News was developed by Education Law Solutions PA under contract with the Idaho State Department of Education. The information provided in this document is not intended to provide legal advice.