



## UNDERSTANDING FAPE

### WHAT MUST THE DISTRICT DO TO PROVIDE AN APPROPRIATE EDUCATION TO A CHILD WITH SPECIAL NEEDS?

There is often a lot of confusion surrounding the concept of FAPE and the legal requirements associated with a school district's duty to educate a child with special needs. Typically, parents want what is best for their child so that he or she can achieve his or her full potential, and expect that a school district's role is to assist them with this goal. However, the reality is not so simple. Parents are understandably shocked when they learn that the law does not require school districts to provide the best possible education for students with disabilities, nor are districts duty-bound to assist students with special needs to reach their full educational potential. Rather, school districts are legally obligated to ensure that special education students have meaningful access to the educational curriculum.

The purpose of this article is to clarify what it means for a school district to provide access to an appropriate education, in the hope that this understanding will help parents to secure the services their children require.

#### The FAPE Standard

The Individuals with Disabilities Education Act ("IDEA") is the Federal Law requiring school districts to provide students with disabilities a Free and Appropriate Public Education ("FAPE"). The IDEA, however, does not expressly define what a FAPE is. Therefore, we must look to the courts for their interpretation of this term.

In the 1982 case of *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, the United States Supreme Court enumerated the following factors to determine whether a district is providing a FAPE:

1. Whether the District's proposed program was designed to meet the student's **unique needs**;
2. Whether the District's proposed program was designed to provide **educational benefit** to the student;
3. Whether the District's proposed placement was designed to provide the student with an education in the **least restrictive environment**; or
4. Whether the District's proposed placement **conformed** to the student's **IEP**.

The Court also specified that a child with special needs is not entitled to the best possible education nor is a school district obligated to maximize the child's potential.

Therefore, when reviewing the educational program offered to your child, you might ask yourself: 1) Does the educational program proposed by the school district, address my son/daughter's unique needs? (2) Will the placement and services provide my son/daughter a measureable educational benefit? (3) Is my child being educated in the Least Restrictive Environment? (4) Is the District providing a program according to what is written in the IEP document to which I have consented? If the answer to any ONE of these questions is "no," then the District is likely not providing a FAPE to a student pursuant to the requirements of IDEA.

#### Educational Benefit – The Rowley Test and Subsequent Interpretations

As discussed above, the *Rowley* decision does not require the absolutely best or "potential maximizing" education for a child who is enrolled in special education. Instead, it requires that a school district provide a "basic floor of opportunity" to

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access specialized instruction and related services which are individually designed to provide an educational benefit to the child. *Rowley*, 458 U.S. 176 at 202. A lower Court in a subsequent case interpreted the Supreme Court's decision as meaning that a child with a disability is not entitled to a "Cadillac" education, only to a "serviceable Chevrolet." *Doe v. Board of Educ. of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993). However, in 2004, the same lower court found that "[a]t the very least, the intent of Congress [when drafting the IDEA] appears to have been to require a program providing a meaningful educational benefit toward the goal of self-sufficiency." *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840 (6<sup>th</sup> Cir. 2004).

Consequently, the mental exercise that parents must engage in when evaluating and/or challenging a District's offer of placement and services is to analyze if the program, as described in the IEP, will allow the child to meaningfully progress academically, physically and socially. If it will not, then they can challenge it as not providing a FAPE.

#### Least Restrictive Environment (LRE)

The IDEA defines LRE as the District's duty to ensure that:

- (i) To the maximum extent appropriate, children with disabilities... are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment 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.

34 C.F.R. § 300.114(a)(2).

Therefore, the placement of a child in a more restrictive environment, for example a special day class, must not occur unless a child cannot be educated in a general education class with supports, or if his or her needs are such that the education of the other children in the class will be compromised by the child being there, by extreme and uncontrollable behaviors for example.

#### General Tips

The determination as to whether a child is receiving a FAPE and whether he or she is receiving an educational benefit can be very subjective. District personnel will often state that a child's achieving passing grades and meeting annual goals is sufficient to show that he/she is receiving a FAPE. However, academics are just one part of the equation. If behaviors or sensory processing issues or gross motor delays or language deficits are preventing the child from accessing the curriculum, then parents can argue that the District is not providing a FAPE.

If you have any further questions on FAPE or need additional information about an issue related to Special Education Law, please do not hesitate to contact us at:

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