



Fagen Friedman & Fulfroft LLP

Soup 2 Nuts of Special Education Law and Practice

**Los Angeles Unified
School District
Charter Schools
By: Ric Silva and
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“Most of us are too fond of people who agree with us and food that doesn’t”

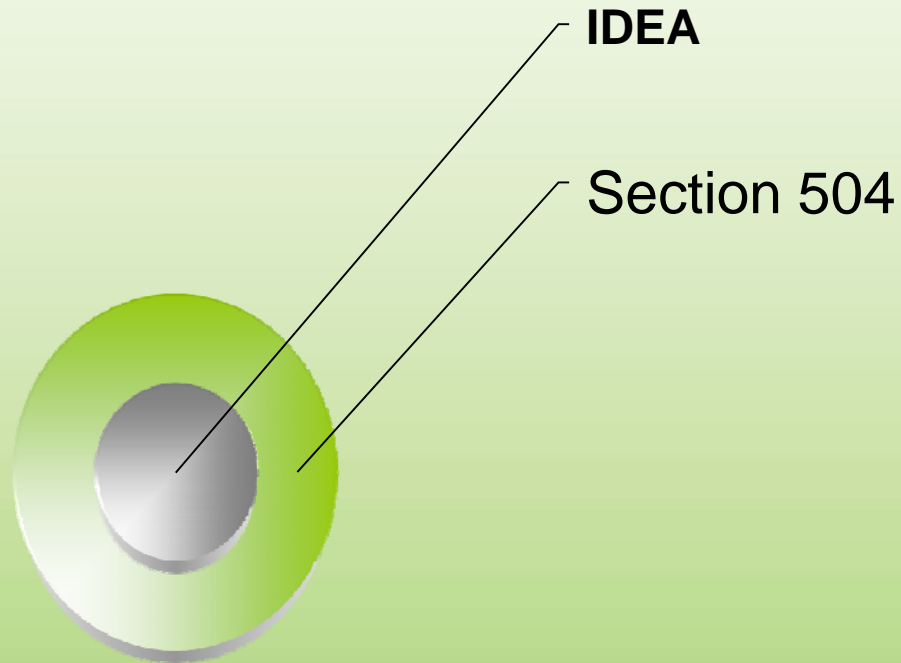
Section I

Soup

Background: Sources of Law



Background: Sources of Law



Public Schools Must Comply with IDEA

- IDEA provides that public schools must identify students with disabilities, identify their needs, and provide them with a free, appropriate public education (FAPE)
(20 U.S.C. § 1400 et seq.)
- Charter schools are public schools. (Educ. Code section 47601(e).)

Public Schools Must Comply with IDEA (cont.)

- IDEAs implementing regulations specifically include charter schools and provide that “children who attend charter schools, and their parents, retain all rights under the IDEA.” (34 C.F.R. § 300.209.)

Who Provides Special Education?

- Charter schools can be a school of the chartering agency; or
- Can be their own LEA for special education purposes.

Who Provides Special Education?

- If they are a school of the LEA, the LEA is ultimately responsible for providing special education services.
- Can have MOUs regarding cost-sharing, etc.

Who Provides Special Education? (con't)

- If a charter school is its own LEA for special education, the charter school is responsible for providing special education services.

A Note About Transfers

- Transfers within the state to school which is a member of different SELPA during the same school year:
- School to which the student transfers assumes responsibility to provide the student a FAPE.
- Within thirty (30) days, the school must either:
 - Adopt the student's previous IEP; or
 - Develop, adopt, and implement a new IEP.

A Note About Transfers

- Transfers to a school located within the same SELPA during the same school year:
- School to which the student transfers must *continue, without delay*, to provide the services comparable to those provided in the student's previous IEP.

Section II

The Main Course: The IEP Process



Rules of Thumb

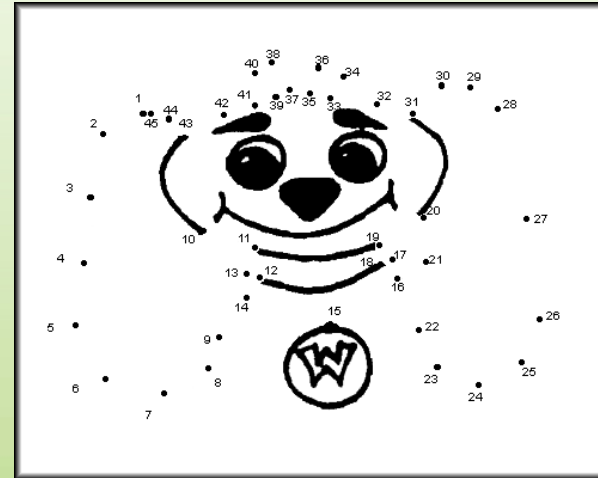


Rules of Thumb

- All communication (verbal and written) must be child-centered.
- Personalize the IEP process; de-personalize the characters.

Connect-the-Dots

- Present levels
- Areas of Educational Need
- Goals
- Placement
- Related services



Parent-Initiated Referrals

- All referrals shall be documented
- If verbal, staff shall assist parent to put in writing



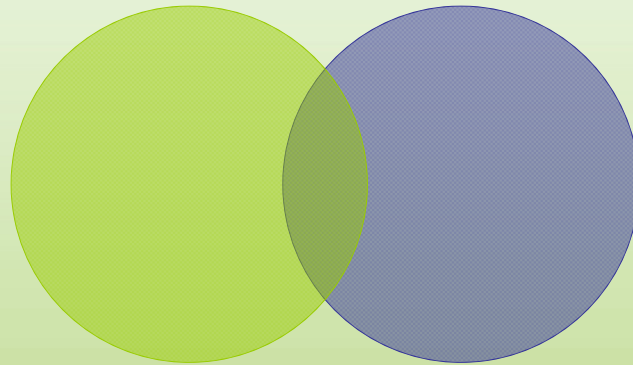
Staff-Initiated Referrals

All staff referrals shall be in writing and shall include:

- A brief reason
- Documentation of the resources of the regular education program that have been considered, modified and, when appropriate, the results of the intervention (*see also* Ed. Code § 56303)

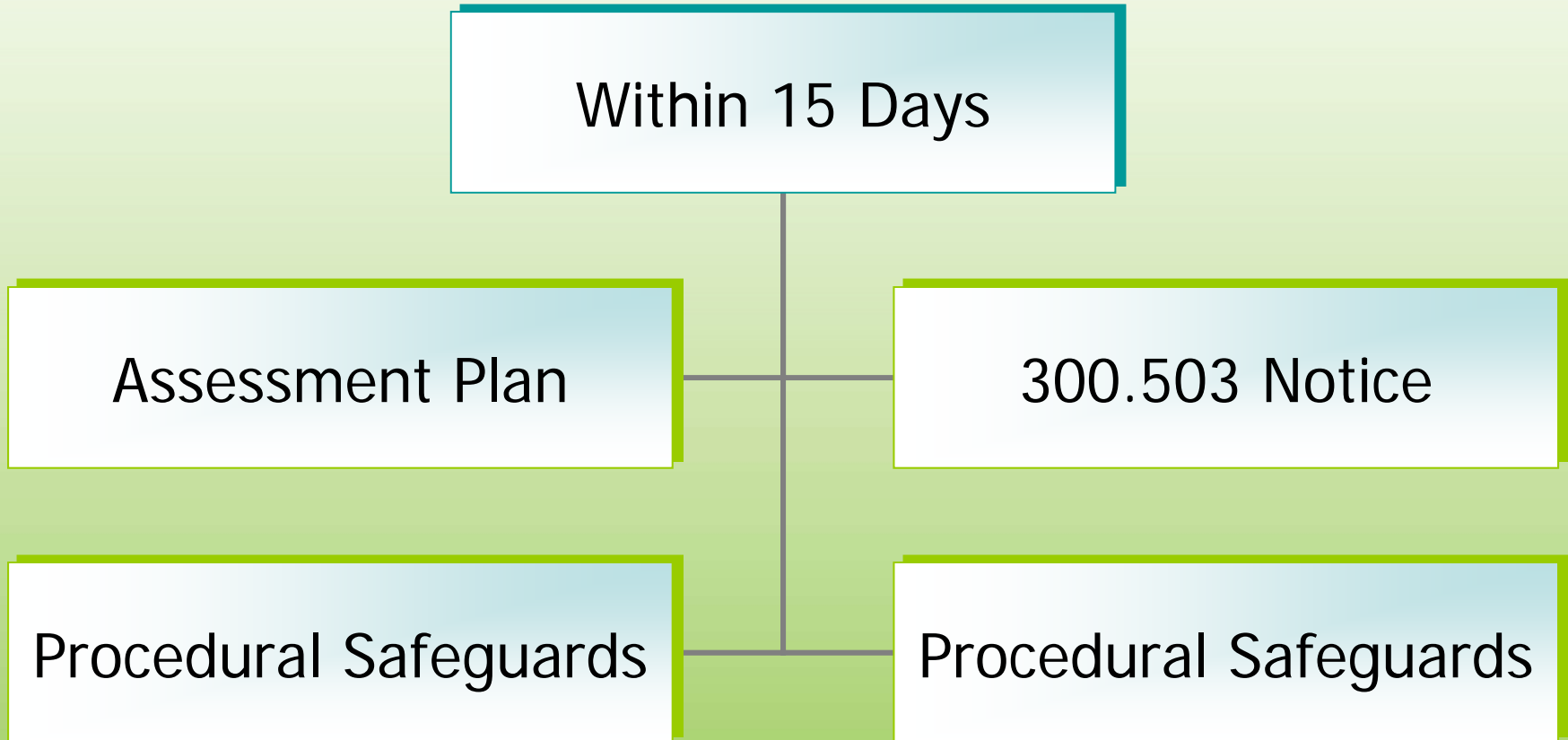


SST



IEP

Assessment Plan or Notice?



Exceptions:

- Not counting days between pupil's regular school sessions, terms, or days of school vacation in excess of 5 school days
- Parents can extend the 15-day time-line *in writing*
- If referral made 10 days or less from end of school year, assessment plan not required until 10 days from beginning of subsequent school year

Parents have at least 15 days to decide whether or not to consent.



School can request a due process hearing over the over the right to assess.

IEP Team Meetings

- Initial IEP
 - Assessments
 - Parent request
 - Annual
 - Triennial
- 60/30
 - 60
 - 30
 - 1 year
 - 3 years

Exceptions

- Not counting days between pupil's regular school sessions, terms, or days of school vacation in excess of 5 school days
- Parents can extend the 60 time-line in writing
- If assessment plan signed 30 days or less from end of school year, IEP not required until 30 days from beginning of subsequent school year

Mandatory Filings

- When can the school file for due process?
 - Initial assessment: Yes
 - Initial services: No
 - Exit from special education
- When must the school file for due process?
 - IEE
 - Lack of consent to a component necessary for FAPE

Will Anyone Cut You a Break?



No Meetings

No Members

Administrator

Qualified to:

- Provide or supervise the provision of specially designed instruction
- Knowledgeable about the general education curriculum
- Knowledgeable about the availability of resources of the public agency
- *What about authority?*



The Crew

- Special Education Teacher
- General Education Teacher
- Administrator
- Assessors/Related Service Providers
- Parents
- Student
- Transition agency reps.



Stowaways

- Scribe
- Case carrier
- Facilitator



Starting the IEP Process

- What are the parents' concerns related to the education of their child?
- Pre-determination

Eligibility

- Meet the requirements of an eligibility category listed in Title 5, section 3030(j)
- Requires instruction, services or both, that cannot be provided with modification of the regular school program. (Hood v. Encinitas Union Sch. Dist., (9th Cir. 2007) 486F.3d. 1099)

Content

Strengths, concerns, results, needs, behavior, language, visually impaired, communication, assistive technology, PLAAFP, general education curriculum, appropriate activities (preschool), goals, progress reporting, special education, related services, supplementary aids and services, modifications, supports, explanation of extent not in general education, testing accommodations, alternative assessments, transition, alternative course of study, ESY, transition, integration, transfer of rights

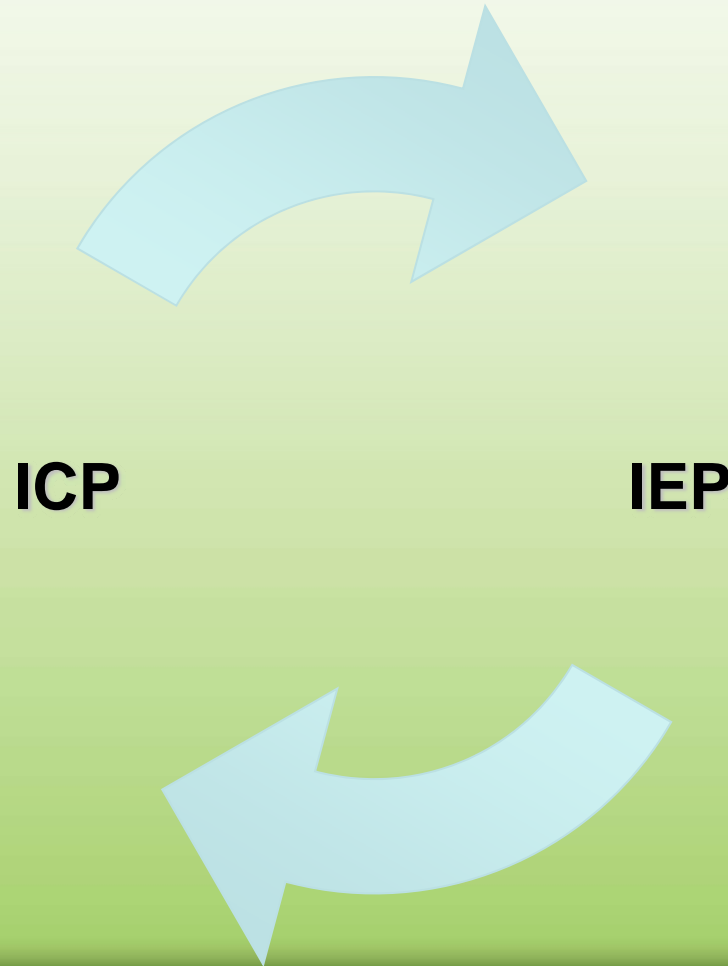
PLAAFP

- Manner in which disability affects involvement and progress in general education (or appropriate activities)
- Involvement in general education
- Refer to reports, observations, experience, etc.

Areas of Educational Need

- Strengths and weaknesses
- Academic, developmental, and functional needs
- Parent concerns
- Positive behavioral interventions and supports and other strategies if behavior impedes ability to learn or that of others
- Language
- Social/emotional
- Communication needs (e.g. braille, DHH)
- Assistive technology needs

Goals (and Objectives)



Written Offer of Placement

REMEMBER

Union v. Smith:

- Put it in writing!
- The failure to write it down can be costly!





Don't Do This:

- Don't fail to put the offer in writing because parents have stated that they will not agree to that placement.
Union v. Smith (9th Cir. 1994)
- Don't discuss multiple placements, but fail to specify the placement being offered in writing.
Mill Valley v. Eastin (Fed. Dist. Ct. 1999)

A Placement's Location



Federal law and regulations

- A child is to be educated in the school he would otherwise attend if not disabled ***unless*** the IEP requires some other placement.

OSEP Letter to Trigg

- The **location** of the student's placement need not be the home school if the **necessary services** are not available there.

California's Continuum of Placement

- Less Restrictive

- More Restrictive



- Regular education program
- Resource specialist program
- Designated instruction and services
- Nonpublic, nonsectarian school services
- State special schools
- Instruction in settings other than classrooms
- Itinerant instruction in classrooms, resource rooms, and settings other than classrooms
- Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions

Least Restrictive Environment

- To the maximum extent appropriate, children with disabilities are educated with children who are not disabled.
- Removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(IDEA, 20 U.S.C. s 1412(a)(5).)

The Legal Elements of the LRE

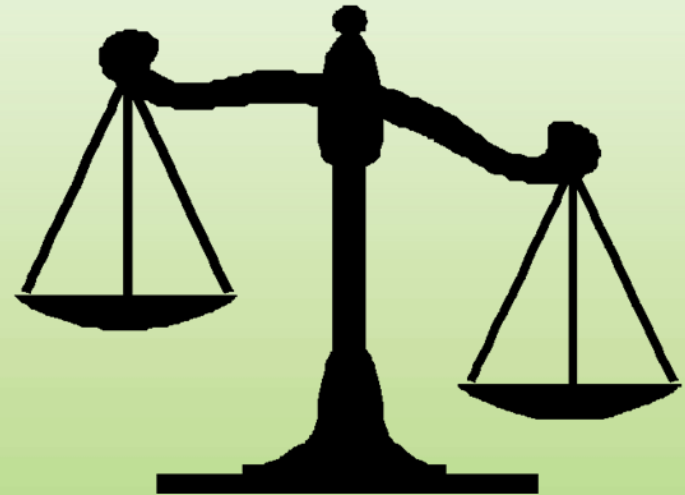
Supplementary Aids and Services

- Supplementary services to be provided in conjunction with regular class placement;
- No removal from general education classroom UNLESS, even with supplementary aids and services, cannot be educated **satisfactorily**.

The Rachel H. Balancing Test

Four factors:

1. Academic benefit
2. Non-academic benefit
3. Effect on teacher/students
4. Cost



Sacramento City USD v. Rachel H. (9th Cir.1994)

Types of Transition

- Infant to preschool
- Preschool to grade school
- Elementary school to high school
- Special education class to general education class
- NPS to public school setting
- High school to work/post-secondary
- Point A to Point B

When It's Time to Change



- School year of 16
- Outcome-oriented
- Promotes movement from school to post-school
- Based on student's needs
- Instruction, related services, community experiences,
- Development of employment, post-school living objectives
- If appropriate, acquisition of daily living skills and functional vocational evaluation

Surviving the Procedures

- The boxes indicate the minute procedures
- The “connect-the-dots” guide indicates the big ones; **focus on that!**

Section III

Nuts:

Managing Difficult IEPs



Rules of Professional Conduct

“The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law.”

Canon 7 of the ABA Model Code of Professional Responsibility

Attorneys as IEP Team Meeting Participants

- Parents and LEAs have the discretion to bring to IEP meetings as team members other individuals who have knowledge or special expertise regarding the child.
- Attorneys and advocates can be individuals who have knowledge or special expertise regarding the child.

LEA's Interests

- Provide appropriate placement for child
- Legal compliance
- Complete the meeting
- Document formal offer
- Protect staff

Parent's Interests

- Protect child
- FAPE offer – and sometimes something different
- Legal compliance

IEP MEETING ALERT LEVELS

SEVERE

SEVERE RISK OF VEIN-POPPING,
HEART-STOPPING OUTRAGE

HIGH

HIGH RISK OF SHOUTING MATCHES
AND THREATS OF LEGAL ACTION

ELEVATED

SIGNIFICANT RISK OF LAW VIOLATION
AND DENIAL OF SERVICES

GUARDED

GENERAL RISK OF
MISINFORMATION AND GUILE

LOW

LOW RISK OF
BACKSTABBING AND DECEPTION

specialchildren.about.com

Identify *Hot* IEP Meetings in Advance

- Red Flags:**
- Parent bringing an attorney
 - Parent requests student records
 - Parent sending letters, emails with concerns
 - Parent requesting IEE
 - Parent seems anxious



Convene Pre-IEP Meetings

- Prepare staff
- Identify potential issues
- Get on same page
- Prepare strategy for contingencies
- Assign roles

Develop Ground Rules



- Post them
- Get agreement
- Enforce them

Prepare An Agenda

- Time limits?
- Allow for additions
- Follow it



Take Breaks

- When tensions are escalating
- When an LEA person says something inappropriate
- When you need to confer in private about a request
- When you need to call your administrator
- When you need to call your lawyer

Agree to Disagree

- Don't get stuck on a point of disagreement
- Move on!



Assign a Facilitator

Someone to:

- Run the meeting
- Introduce the agenda and keep things moving
- Address parent concerns
- Enforce the ground rules calmly
- Focus the discussion on the student's needs
- NOT the person filling out the forms!

Running an Effective IEP Meeting

- Early in the meeting, actively solicit the parent concerns for the educational program for his/her child
- Assist the parent in formulating the issue and/or their interest, not necessarily the solution
- At the end of the meeting, check to make sure parent issues have been addressed

During the Meeting

- Enforce privacy/no interruptions rule
- Ensure you have the necessary forms and technology (computers or phones)
- Offer refreshments
- Identify and respect time constraints
- Identify next steps and then follow through

What works?

- Aggressiveness
- Persuasiveness
- Control
- Cost
- Division
- Leverage

Aggressiveness



Aggressiveness

- Preempt
- Acknowledge
- Deescalate
- Respond
- Follow-through

Persuasion



Persuasion

- Simplify
- Child's needs
- LRE
- A note on predetermination

Control



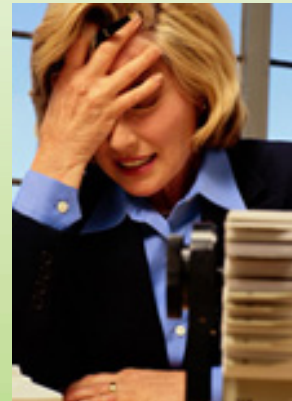
Control

- Your FAPE
- Your notes
- Your presumption
- Your knowledge



Cost

- Tax payers
- Stress
- Publicity



Division



+



Division

- Who is the LEA?
- Getting on the same page
- Predetermination

Leverage



Leverage

- Connect the dots
- Close loose ends
- Fix the past

Play to your strength:

Stay calm





WE HOPE YOU ENJOYED YOUR MEAL!



Thank You

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