



# **Bridging the Gap: Extended School Year**

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# ***The Bedrock of Special Education: Free Appropriate Public Education (“FAPE”)***

- The concept of a FAPE is the cornerstone of special education law. A federal law called the *Individuals with Disabilities Education Improvement Act* (“IDEIA” or “IDEA”) requires State agencies to ensure that every child qualifying for special education services receives not only a free education, but one that is appropriate in light of that child’s needs relative to his or her disability



# ***Achieving the FAPE Objective: The IEP***

- The services received by a child eligible for special education are determined through the development of an Individualized Education Program or *IEP*.
- A well-drafted IEP with clear, quantifiable goals is more likely to lead to a successful program. A poorly drafted IEP is a sure way for the parent, student, and teacher to get off-track.
- The IDEA defines the IEP as a written statement that includes several required components. The IEP must include the child's present levels of academic achievement and functional performance and, among other things, information about how the disability affects the child's involvement and progress in the general curriculum.



# Assessments

- Determining the child's eligibility and an appropriate placement and program
- Parents' consent to assess the child
- This pre-placement evaluation must be performed within a reasonable period of time from the date the child was referred for special education services and no later than 60 days from the date that the parents provided their written consent for assessment.



# IEP Participants

- Parent is an ***equal member*** of the IEP team, and the District must take steps to ensure that one or both parents can attend the meeting
- Parent can bring whomever they wish to the IEP meeting
- These school district personnel must attend IEP:
  - A regular education teacher if the child is or may be participating in the regular education environment
  - A special education teacher
  - A district agency representative who has the authority to approve the funding for the services provided for in the IEP
  - Any person who conducted an assessment of the child, or someone who is qualified to interpret the assessment report



# Structure of an IEP Meeting

- As equal members of the IEP team, the parent(s) ***must*** be given the opportunity to share concerns regarding their child's education as well as their child's strengths and weaknesses.
- Reviewing assessments
- Goals
- Clear, written offer of placement and services
- All information discussed at the meeting must be recorded on a written IEP document and presented to the student's parents



## Required Components of an IEP

- According to the IDEA an IEP must contain the following:
  1. A statement of the student's present levels of educational performance;
  2. A statement of annual goals;
  3. A statement of the special education and related services, supplementary supports and program modifications the student will receive;
  4. An explanation of the extent to which the student will not participate with non-disabled students in the regular class, and nonacademic and extracurricular activities;
  5. A statement concerning a student's participation in state or district-wide assessments, including any needed modifications of the administration of the test;
  6. A beginning date for the student's placement and related services as well as the duration and frequency of the services to be provided;
  7. A statement as to how the district will notify the student's parents about the student's progress toward achieving his annual goals as outlined in the IEP;



# Disagreement with the IEP

- School districts CANNOT implement those IEP components to which parents have not consented
- Parent is not obligated to sign the IEP immediately, and may provide his consent at a later date
- If parent and school district cannot come to an agreement, both have the right (and for a school district at times an obligation) to file a Due Process Hearing.



# The Concept of the Extended School Year (“ESY”)

- School districts must ensure that ESY programs/services are available as necessary to provide a FAPE.
- ESY services must be provided “only if a child’s IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.”
- In cases where a student with disabilities’ educational programming is interrupted by summer vacation, and the student suffers a severe regression of skills and is likely to experience great difficulty in recouping those lost skills once programming resumes after the summer, the law provides that ESY programming is a necessary component of providing such students with a FAPE.
- Depending upon the state in which you live, the standard of review concerning the appropriateness of an ESY program for a given student may be different.



# Key Concepts for ESY

- Remember: with regard to ESY services for your child is that no matter what State you live in, your school district is required to provide an educational program that is appropriate for your child. Some key things to keep in mind when planning your child's ESY program:
  - ESY services are designated to help the child maintain readiness to begin the next year;
  - The IEP Team must determine whether the child requires an ESY program;
  - The needs of the student dictate the program, not the availability or non-availability of a program during the summer;
  - A student is not required to fail before the IEP considers an ESY program;
  - IDEA does not require that ESY be provided in order to maximize educational opportunities for a child with a disability;
  - An ESY program targets areas of deficit which would be severely impacted by an extended break in instruction;
  - ESY is not compulsory. A parent may choose to refuse the ESY program or service.



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## **IEP team's determination that Seth qualifies for ESY services**

- Districts must ensure that ESY programs/services are available as necessary to provide a FAPE.
- ESY services must be provided "only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child."
- Presumably, Seth's IEP team discussed whether his unique needs require an ESY program to maintain his skills. There is no indication that this occurred in the script. It could be that the District does not make an individual determination for ESY for each special education student; many districts will offer their ESY program to all autistic children.



## Valley Unified School District's "Model Extended School Year Program" for all Autistic Students

- Here, the Valley Unified School District has endeavored to create a one-size-fits-all approach to ESY by creating a "model program."
- Districts must provide an educational program that is appropriate for the individual student by taking into account that child's unique needs. Autistic children have varying needs making it unrealistic to expect that one "model program" would meet the needs of "all autistic students."
- Some districts tend to offer parents *the* ESY program rather than create one that meets the needs of the child. Typically districts offer a 5-6 week ESY program over the summer if they determine ESY is required for the student.



## **School Psychologist's Program That Keeps Autistic Children "Engaged Over The Summer"**

- Mr. Gates indicated that the goal for the Anne Bomhard's Model Extended School Year program for all of our autistic students was to "keep them engaged" over the summer. Under the law, however, the goal of ESY is maintenance of skills previously learned. This should be the goal of any professional working to create an ESY program.



## District's Offer of ESY Prior to Discussion of Seth's Needs

- Anne Bomhard, after discussing the “flagship program” she created, explains what the district is offering. Parent should know that it is never appropriate for a district to discuss its offer prior to discussing the child’s needs.
- A parent can in no way evaluate the appropriateness of an offer without first understanding what the IEP team’s collective professional understanding is.





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# District's Proposal of a Special Day Class

- The District is offering a special day class placement for Seth during ESY because they do not offer a general ed class over ESY. If we assume that Seth's general ed placement is appropriate, there is a problem with the District's ESY placement offer.
- LRE: The law requires that each special ed student be placed in the least restrictive environment. Specifically, each district must, to the maximum extent appropriate, educate disabled children alongside typically developing children.
- The general ed classroom is likely the least restrictive environment for Seth.
- The lack of a general ed classroom during the summer does not relieve the district of their obligation to provide LRE placement.



## **“It Is Not Fair To Treat Seth Differently Than Other Children By Giving Only Him A General Ed Placement”**

- A district’s inability to provide a particular placement or service that a student requires does not relieve it from its obligation to so provide. Parents should be cautioned not to fall for this common ploy of districts.
- Districts will often attempt to guilt a parent into accepting that it would be unfair to provide a particular placement or service to their child when other children similarly situated do not receive the placement or service either.
- Your child’s IEP is about his or her needs, not other children’s. A child’s placement and services must be a function of those needs not of district resources or simply what other children receive.



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## Frank Hoffman's Statement That Seth Will No Longer Need RSP During ESY

- RSP would still be required for Seth over ESY if, without it, he would be unable to maintain his skills over the summer break in instruction.
- Rather than discussing his needs, however, Mr. Hoffman made an unsupported assertion that Seth will not need ESY because of the SDC. Under the facts, it is unclear whether Mr. Hoffman can support his opinion.
- Mom should ask further questions of Mr. Hoffman including what, specifically, is different about the SDC that will allow for the removal of RSP from Seth's program.
- Because RSP is generally associated with student's placed in general education classes, the reason behind Mr. Hoffman's recommendation is likely that the school district does not have an RSP program during ESY.



## **“ Seth Was Close To Meeting 60% Of His Previous Goals & Objectives And Took 6 Months To Recoup Those Skills”**

- In most circuits, if a child will suffer severe regression of skills if instruction is interrupted, and would experience difficulty recouping those skills after his return to instruction, ESY must be provided that child. This fact pattern is the classic case for ESY services, for without ESY services the previous year, Seth’s educational progress was set back six months.
- This requires Seth’s IEP team to determine what will be necessary to avoid this result again this summer. It is likely that the same or similar program that allowed for Seth’s skill acquisition (60% progress towards goals), would be appropriate in a slightly reduced amount during ESY. The reduction is often appropriate during ESY as the focus shifts from skill acquisition to skill maintenance.



## **“The Purpose Of ESY Is Not To Maintain Progress, But To Prevent Significant Regression”**

- The law provides in most states that ESY must be provided to a student who will suffer severe regression in skills and experience difficulty recouping those skills. This is not to be confused with purpose of ESY, to maintain skills.
- Mr. Gates’ comment about the law here is close enough to the correct rule statement for ESY qualification that when he uses it incorrectly to comment on the goal of ESY, it is easy to miss. The point here is that districts often get the law wrong and you must be on your toes.



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# Ms. Nuñez's Equality Philosophy Comment

- The essence of special education law is that what is appropriate for one student is not necessarily appropriate for another. This is why Congress chose to call them *Individualized Education Programs*.
- Ms. Nunez's equality philosophy is shared by many – justice or fairness is treating different cases similarly. At the heart of special education law is a very different conception of fairness – that justice or fairness is achieved by treating different cases differently.



# Four-Hour Day For ESY

- Districts are required to offer ESY if it is necessary to provide a FAPE to a particular child. If four hours per day in an SDC is not appropriate for Seth, then the District must not offer it. Here the District is fitting the child around an existing program rather than the creating a program around the child.



# Sensory Breaks

- As stated above, a child's program must be appropriate in light of the child's unique needs. If a child requires "sensory breaks" in order to receive a benefit from his educational placement, then he must be provided the sensory breaks. Simply because it is difficult to meet all of Seth's needs within the district's 4 hour ESY program, does not mean that the District may cut out Seth's sensory breaks. This is an important issue for Seth and mom should not have let Mr. Gates "table the discussion" just because the team has other appointments.



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## No Speech and Language Therapy Because SDC is “Language Based”

- Districts must offer “related services” such as speech and language therapy if it is necessary to provide the child with an appropriate education. Here, it is unclear what a “language based SDC” is. It is unlikely that it would substitute for individual speech and language therapy for Seth.
- Mom needs to ask more questions of the speech pathologist here to determine why she thinks the SDC substitutes for the current speech therapy. It is altogether likely that a personal motivation for time off for the SLP could be driving her opinion that Seth doesn’t need her services.
- The SLP also noted that collaboration with Seth’s teacher will likely be sufficient for Seth during ESY. Collaboration/consultation is no substitute for direct services.



# “Up To 30 Minutes” Per Month Of Speech

- Never a good idea to put in “up to” language, as “up to 30 minutes” is anywhere from no minutes to 30 minutes
- Also, since Seth experienced severe regression during the last interruption of instruction the previous summer, including expressive language skills and increased echolalia, the proper question for the team to ask is not whether he needs S/L therapy, but what level and amount is sufficient to avoid the type of severe regression that hallmarked the previous summer.



## **Sally Winter's Inability To Answer Gates' Question regarding Seth's OT Regression**

- Mr. Gates asks Ms. Winters whether Seth will regress if he doesn't receive direct OT over the summer and Ms. Winters is unable to give a professional opinion. She claims this is due to insufficient data on regression.
- Mom must recognize that any reduction in OT for ESY, like the one that Mr. Gates is proposing, is unsupported by data and, at least at first, by the District's own OT.
- Once Ms. Winters does cave to Mr. Gates and recommends 1 session for 30 minutes – a reduction – mom must question Ms. Winters regarding the basis to support the recommended reduction.
- Mr. Gates' willingness to lowball the student to determine a baseline for regression should turn the stomachs of all people in attendance. Your child deserves to have the district get it right or at least try to get it right, not as a guinea pig.