

MOCK IEP ISSUE SPOTTING



STOP SIGN LEGAL ISSUES



1

1. **Attendance by specific persons needed for your child's development:** How does Mrs. Conner know all the appropriate IEP team members are present at the IEP meeting?
 - a. 20 U.S.C. 1414(d)(1)(B): IEP Team:
 - i. The **parents** of a child with a disability – **(Diane Conner)**
 - i. At least one **regular education teacher** of such child (if the child is, or may be, participating in the regular education environment) - **(None)**
 - i. At least **one special education teacher**, or where appropriate, at least one special education provider of such child. - **(Loretta Jackson)**
 - i. A **representative of the local educational agency** who – **(Mike Winsor – Principal)**
 1. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities.
 1. Is knowledgeable about the availability of resources of the local educational agency.
 - i. An individual who can **interpret the instructional applications of evaluation results**, who may be a member of the team described in

clauses (ii) and (vi). - **(Linda Steiner – School Psychologist; Carol Williams – Speech Therapist; Bobbie Wondries – Occupational Therapist; Steve Mason – Autism Specialist)**

i. At the discretion of the parent or agency, other individuals who have **knowledge or special expertise** regarding the child, including related services personnel as appropriate - **(Alena Hernandez – Early Start Service Coordinator)**

i. Whenever appropriate, the **child** with a disability - **(None)**

a. HERE: It appears that every needed member of the IEP Team is available, with the exception of a general education teacher. If there is even a possibility of placement in general education, this teacher would need to be present as part of the IEP team. Parents may bring friends, relatives, an advocate, an attorney, or other persons who have “knowledge or expertise regarding the child.” 34 C.F.R. Sec. 300.344(c)

1. **Copies of reports provided in advance of IEP:** Diane Conner has not received a copy of assessments prior to IEP meeting.

a. 34 Code of Federal Regulations § 300.562: Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made.

a. 34 Code of Federal Regulations § 300.534:

(a) Upon completing the administration of tests and other evaluation materials -

(1) A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in §300.7; and

(2) The **public agency must provide a copy of the evaluation report** and the documentation of determination of eligibility to the parent.

a. HERE: Your State may have its own statute requiring school districts and other public agencies to provide copies of assessments and records to parents in advance of IEPs. Keep in mind that it is always a good idea to request that the school district provide you copies of any assessments or other documentation (such as draft goals and objectives) the school district prepares for an upcoming IEP, a reasonable period of time (i.e. 2-3 days) in advance of the meeting. In this case, it appears that the district assessors had completed their reports in advance of the IEP meeting, but “because of district policy” the reports were not provided to parents to review until the day of the IEP.

1. District policy issues v. Federal and/or state law requirements: Mike Winsor's comment about reviewing assessment reports at IEPs.

- a. 10th Amendment to the United States Constitution: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
 - a. HERE: Even though Mike Winsor says that it is district policy to go over the reports at the IEP meeting, federal law trumps this policy and parents must be provided with the reports upon their completion.
-



2

1. Parent's rights - school district must ensure that a full explanation of procedural safeguards is provided to parents: Mike Winsor hands a copy of rights to parents.

- a. IDEA 2004 Section 615(d)(1)(A): A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum—
 - (1) Upon initial referral for evaluation;
 - (2) Upon each notification of an IEP meeting;
 - (3) Upon reevaluation of the child; and
 - (4) Upon receipt of a request for due process under §300.507.
- a. IDEA 2004 Section 615(d)(2): Contents: The procedural safeguards notice must include a full explanation of all of the procedural safeguards
- a. HERE: A copy of parent rights must be given to parents at each IEP meeting. Although Mike Winsor handed Mrs. Conner her "Parent's Rights," he does not offer to review those rights with her or provide further explanation. If Mrs. Conner does not understand her rights, she will not be able to fully consent to Tyler's placement. Parents are encouraged to read their rights, ask questions, and when appropriate, bring a knowledgeable attorney to protect those rights.

1. IEP time constraints: Mike Winsor is concerned about limiting the IEP.

- a. The IDEA prescribes no specific length for an IEP meeting, since the amount of time required to adequately address a child's educational needs **depends on how complex** those needs are.

- a. But as the hearing officer in *El Paso Independent School District*, [34 IDELR 226](#) (SEA TX 2001), recognized, controlling the length of a meeting is not always an easy task. On one hand, districts have an **"understandable and legitimate need to conduct [IEP team] meetings within a reasonable amount of time."** But on the other hand, parents might take the imposition of an arbitrary time limit as a signal that the district is "not seriously committed to addressing or resolving parental concerns." In any event, as a legal requirement, the district must schedule sufficient meeting time to allow the parents to **"meaningfully participate"** in the IEP process. Of course, a session cannot continue indefinitely, and the district has the right to adjourn the meeting after a **reasonable time**, even if the parents object. As a matter of establishing and maintaining cordial relations among the parties, districts should make a reasonable effort to not make feel parents rushed or pressed for time during the meeting. See, e.g., *Grapevine-Colleyville Independent School District*, [21 IDELR 875](#) (SEA TX 1994).
 - a. Notice of Interpretation, Appendix C to 34 CFR Part 300, Question 10: As a practical matter, initial IEP meetings generally take more time than meetings to review existing IEPs, assuming the child is making satisfactory progress on his or her IEP goals and no difficulties have arisen since the last meeting. Similarly, the amount of time required to adequately address the educational needs of students will be a function of how complex those needs are.
 - a. HERE: Mike Winsor says, "I have another meeting in about an hour-and-a-half, so let's try to get this IEP wrapped up." Mrs. Conner is worried that Tyler's needs will not be adequately addressed, and the IEP team members are concerned about their next appointment. In this scenario, it would be appropriate for the District or Parent to express any time constraints at the beginning of the meeting, and then to efficiently pace the meeting as needed. The person in charge of the meeting, usually the Special Education Director or Principal, should intervene if anyone gets off course from the purpose of the meeting. Mike Winsor should have politely asked Linda Steiner to concisely offer her report findings and recommendations. If, despite these tactics, time runs out, simply schedule an addendum IEP meeting to continue the discussion. When notice was sent to Mrs. Conner regarding the IEP meeting, if she believed that the time frame was too narrow, she could have sent a letter back to the District expressing this concern, and tried to re-schedule to accommodate the desired time frame.
1. **School district's obligation to assess in all areas of suspected need**: Linda Steiner's report is mostly observations because she "didn't have time" to do any formal testing.
- a. 34 C.F.R. Sec. 300.24(b)(4): The district has the responsibility for assessment in **all areas related to the suspected disability**. If there is no district person competent to carry out certain kinds of evaluations, the district may contract out for the service or may use the results of any available independent assessment.

- a. 20 U.S.C. Sec. 1414 (b)(3)(B)(i); 34 C.F.R. Sec. 300.532(d)(e)(f), (b), (d): Tests must be validated for the specific purpose used and be given by trained personnel. Tests must accurately measure a child's aptitude or achievement and assess specific areas of educational need rather than providing a single IQ and/or reflecting the child's impaired sensory, manual, or speaking skills. No single procedure or test is to be used for determining an appropriate educational program.
 - a. HERE: When Linda Steiner says that her report consists mostly of observations of Tyler because she "didn't have time to do any formal testing," we question whether Linda has really comprehensively assessed Tyler. Although federal law does not require formal evaluations, any testing done must provide parents and the IEP Team an "accurate" measure of the child's strengths and weaknesses. If we don't get an accurate picture of the child's present levels of performance then it is relatively impossible to develop appropriate annual goals and incremental objectives for the child. In this circumstance, it may be necessary for Mrs. Conner to obtain an independent educational evaluation ("IEE"). 34 C.F.R. Sec. 300.502.
-



3

1. **Copies of reports provided in advance of IEP:** Carol Williams did not make copies of her speech and language report.
 - a. HERE: Carol Williams finished her report the same morning of the IEP and "really didn't have a chance to make copies." It is important that the school district understands that you expect them to have the reports ready, in advance of the IEP so they don't wait until the last minute to finish them and, as in this case, end up providing the report to you the day of the IEP. It is also best to request any assessment reports be given to you in advance of the meeting. You should make this request in writing to the school district. 34 Code of Federal Regulations § 300.562.
1. **Parent has the right to participate equally in development of the IEP:** questions from Mrs. Conner regarding the speech service.
 - a. 20 U.S.D. Sec. 1414 (d)(3)(A)(i); 34 C.F.R. Sec. 3000.5333(a)(1); 34 C.R.F. Part 300, App. A C, Q. 5: Parent has the right to **present information** to the IEP team and **participate equally** in the development of the IEP.
 - a. 20 U.S.C. §1400(c)(5)(B); (d)(1)(B): The Congressional findings and purposes relative to the IDEA conclude a finding that: "Over 20 years of research and experience has demonstrated that the education of children with disabilities can be

made more effective by...strengthening the role of parents and ensuring that families of such children have **meaningful opportunities to participate** in the education of their children at school and at home."

- a. The public agency is only responsible for implementing decisions, whether written or oral, that reflect the placement team as a whole and are formally adopted by the placement team, and the agency is not required to give effect to the opinions of individual team members. See *Letter to Anonymous*, [25 IDELR 529](#) (OSEP 1996). **While parental preference may be one factor that is considered in determining the overall outcome with respect to placement, it is not the predominant or overriding force in making a final placement decision or deciding any matters that individually comprise placement.** *Letter to Bina*, [18 IDELR 582](#) (OSERS 1991). It is reasonable to allow the majority recommendations to constitute the IEP. *Letter to Coleman*, [211 IDELR 269](#) (OSEP 1981). Thus, it is possible for school personnel to make determinations on these issues without the agreement of parents, providing they reflect a consensus of the multidisciplinary team.
 - a. *Letter to Bina*, [18 IDELR 582](#) (OSERS 1991). Accord *Letter to Vergason*, [17 IDELR 471](#) (OSERS 1991): Some states offer **parental choice options**, which allow parents to select their child's placement. While such state laws are generally consistent with federal law, school districts should be certain that parents select an appropriate placement giving full consideration to all the legal requirements surrounding placement under the special education laws.
 - a. **Counterproductive Placements:** Placement decisions should not be made in the face of overt parental opposition that rises to the level of hostility, the result of which prevents students from learning and achieving an educational benefit in a particular placement. When faced with such compelling facts, some courts have, in rare cases, ordered school districts to defer to parents' preferred placement. See *Board of Educ. of Community Consol. Sch. Dist. No. 21 v. Illinois State Bd. of Educ.*, 938 F.2d 712 (7th Cir. 1991); *Greenbush Sch. Comm. v. Mr. and Mrs. K.*, 949 F.Supp. 934 (D. Me. 1996); and *Metropolitan Gov't. of Nashville/Davidson County v. Guest*, [28 IDELR 290](#) ; 900 F. Supp. 905 (M.D. Tenn. 1995). The same has been true under Section 504. See also *South Royalton Sch. Dist.*, [27 IDELR 920](#) (SEA VT 1998). Every educational dispute has the potential to create ill will between parents and school districts. Many a parent has attempted to use this "poison well" theory to challenge placement and has failed.
 - a. HERE: It is very important that Mrs. Conner asks questions and participates in the development of her child's IEP. If a parent does not understand the testing or results, they cannot truly give their consent. So, ask questions!
1. **Under IDEA, the IEP program should be individualized to meet each child's needs:** placing Tyler in the GUSD "speech program."

- a. **A “free and appropriate public education” (FAPE)** is defined in [34 CFR 300.13](#) of the IDEA as special education and related services that are provided:
 - 1. At public expense, under public supervision and direction and without charge.
 - 1. To meet standards of the state educational agency.
 - 1. To include preschool, elementary school or secondary school education in the state involved.
 - 1. In conformity with an IEP that meets the requirements of [34 CFR 300.340](#).

- a. [34 CFR 300.26](#): The services must address **all** of the child’s identified special education and related service needs, and the services and placement must be based on the child’s **unique needs** and not on his/her disability.

- a. In 1982, the U.S. Supreme Court issued a decision in *Board of Education v. Rowley*, 458 U.S. 176, declaring that under federal law an **“appropriate”** educational program and placement is one that provides services to the disabled student sufficient for her to obtain **“educational benefit.”**

- a. HERE: Is the District’s speech program really individualized to meet Tyler’s unique needs or is Ms. Williams simply recommending the school district’s speech program because it’s convenient for the district and an efficient use of available staff?

- 1. A licensed or credential may not be required if the student would derive an education benefit: Carol Williams tells Mrs. Conner that a trained speech “specialist” will provide Tyler with speech therapy.
 - a. [34 CFR Sec. §300.23](#): **Qualified Personnel**: Personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

 - a. [34 CFR Sec. §300.136 \(b\)\(1\)\(3\)](#): **Personnel Standards**: Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act.

 - a. In *Brevard County Sch. Bd.*, [41 IDELR 288](#) (SEA FL 2004), a Florida district offered an appropriate IEP to a 4-year-old student with a cochlear implant even though it did not offer her a certified auditory-verbal therapist. The proposed therapist was trained in auditory-verbal therapy and had over 30 years of experience. The ALJ determined there was no applicable state or federal law that required an AV therapist to be certified in AVT techniques.

 - a. **What it means**: Recognizing the IDEA does not require a district to accede to a parent's educational preferences, the ALJ determined that an uncertified but **very**

experienced AV therapist still provided FAPE because the student would derive "**some educational benefit**" from the therapy. The therapist met both the IDEA definition of "**qualified personnel**" and **state licensure** requirements.

- a. HERE: The District told Mrs. Conner that the speech services will be provided to Tyler in a group setting by a "trained speech 'therapist.'" The District says that although she is "very good," she is not a licensed pathologist or credentialed speech therapist. On one hand, Mrs. Conner wants Tyler to have the best speech services. On the other hand, the law appears to say that even if the therapist is not licensed or credentialed, but is "very experienced," and Tyler is able to derive "some educational benefit," the District has met their requirements. This issue is complex because so much of it is based on State requirements. If you experience a similar situation, research your state's laws about credentials and licensing. If the District's employee does not meet those state-mandated requirements, then you can fight for someone who does to provide services for your child.
-



4

1. **Methodology and type of instruction must be addressed by the IEP team even if the school district doesn't "typically" do it that way.** Bobbie Wondries doesn't believe in sensory integration.
 - a. 34 CFR 300.26 (b)(3): Federal regulations define **special education services as "specially-designed instruction...to meet the unique needs of a child with a disability."** Specially-designed instructions 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 and to ensure his access to the general curriculum, so that he can meet the educational standards that apply to all students.
 - a. Because IDEA is premised on the uniqueness of each disabled child's educational needs, it is conceptually difficult and arguably inconsistent with IDEA to further define just what types of curricula, methods, materials and resources comprise special education.
 - a. County of San Diego v. California Special Education Hearing Office, 24 IDELR 756, 760 (9th Cir. 1996): **Unique Needs**: The unique needs of a student with a disability encompass more than a mastery of academic subjects. Unique needs should be broadly construed to include academic, social, health, emotional, physical and vocational needs, all as relating to the provision of preschool, elementary and secondary education services.

- a. Board of Educ. of Downers Grove Grade Sch. Dist. No. 58 v. Steven L., 23 IDELR 36 (N.D. Ill. 1995): Generally, parents may not require a school district to educate their child using a certain, specific educational methodology. As the Supreme Court recognized in *Rowley*, "once a court determines that the requirements of (IDEA) have been met, questions of methodology are for resolution by the States." Still, there are cases where one cannot distinguish issues of methodology from issues of appropriateness, and in such instances methodology is an appropriate topic of discussion at IEP meetings.
 - a. 64 Fed. Reg. 12552 (3-12-99): "In all cases, whether methodology would be addressed in an IEP would be an IEP team decision."
 - a. Gill v. Columbia 93 School District, 32 IDELR 254 (8th Cir. 2000): "Parents who believe that their children would benefit from a particular type of therapy are entitled to represent their views at meeting of their child's IEP team, to bring along experts in support, and to seek administrative review. The statute set up this interactive process for the child's benefit but it does not empower the parents to make unilateral decisions about programs (from) public funds."
 - a. Adams v. State of Oregon, 31 IDELR 130 (9th Cir. 1999): "Neither the parties nor the hearing officer dispute the fact that the Lovaas program which the [parents] desired is an excellent program... Nevertheless, there are many available programs which effectively help develop autistic children. [cite omitted] IDEA and case law interpreting the status do not require potential maximizing services."
 - a. Dong v. Board of Education of Rochester Community School, 31 IDELR 157 (6th Cir. 1999): "I(n) this case the crux of the disagreement concerning Lisa's 1996-7 IEP can be found in the competing methodologies of the TEACCH-based and DTT programs. The decision not to provide the more intense one-on-one behavioral therapy that the Dongs requested cannot be considered a failure to address Lisa's 'unique need.'"
 - a. HERE: It does not matter if Bobbie Wondries believes in sensory integration or not. If the therapy is necessary to provide Tyler with an educational benefit, then the District must provide the service, or find an alternative placement or provider who offers the service. The District will probably argue that there are many available programs which effectively help develop autistic children, so sensory integration services are not needed. This appears to be one of the cases where one cannot distinguish issues of methodology from issues of appropriateness, so is an important issue to discuss. This issue is fact-specific to every case, and depends on the unique needs of the child and how they can be met.
1. **Assessment in all areas of suspected need:** Bobby Wondries does not assess Tyler's sensory motor skills.

- a. HERE: Bobbie Wondries only assesses fine and gross motor skills, but not sensory integration skills. This is a related issue to Linda Steiner’s report consisting only of observations because she “didn’t have time” for formal assessments. A FAPE must be provided to each child and must be entirely designed to the specific and unique needs of the child. Since Mrs. Conner is concerned about Tyler’s learning disabilities and has suggested sensory integration dysfunction, her comments and concerns should be taken seriously and not simply cast aside by Bobbie Wondries. Tyler is not limited only to the services and placement offered by the District. If in fact sensory integration would be integral to Tyler’s growth and development and necessary for him to benefit from his education, school district staff members like Bobbie Wondries have a duty to implement a program that appropriately addresses his sensory needs.
-



5

1. The placement and services must be tailored to each child to meet their individual and unique needs (FAPE). Mike Winsor’s outline of the school district’s offer.

- a. 20 U.S.C. 1414(d)(1)(B): The IEP must set out the amount of special education and related services – including the frequency, duration, and location of the services and modifications—to be provided, so that the level of the agency’s commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and 2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.
- a. 20 U.S.C. 1412(a)(5)(A): “To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, [should be] educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from regular educational environment [should occur] only when 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 satisfactory.”
- a. 34 C.F.R. Secs. 300.306 and 300.553: The law is clear that students with disabilities have the right to participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to their needs. Further, school district must provide these activities in a way that gives students with disabilities an equal opportunity to participate. Such services and activities

include lunch, recess, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, and employment opportunities.

- a. 20 U.S.C. Sec. 1414(d)(A)(iii); 34 C.F.R. Sec. 300.347(a)(3): Every IEP requires a statement of the special education and related services that will be provided for the child to be involved and participate in extracurricular and other nonacademic activities.
- a. 20 U.S.C. Sec. 1414(d)(1)(A)(iv): Federal law requires that the IEP include a statement of the extent to which the student will not participate with nondisabled children in the regular and extracurricular and nonacademic activities.
- a. HERE: Mike Winsor tells Mrs. Conner that Tyler will receive: 1. Placement in a SDC, 4 days per week; 2. Speech and Language Services for 20 minutes per week in a small group; and Occupational Therapy consultation 1 time per month. Placement must include the frequency, duration, and location of the services and modifications. Here, the location and any modifications are missing. Also, OT 1x per month does not seem adequate, but may be depending on Tyler's specific needs. These services must be based on Tyler's unique needs and not based on any other factor such as administrative convenience, budget, or type of disability.

1. The child's unique needs trump availability of space, budget concerns, or administrative convenience: Mike Winsor tells Mrs. Conner about Tyler's placement.

- a. 34 C.F.R. Part 300, Appendix A, Q.1; 64 Fed. Reg. 12471 (3/12/99): In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs, and not solely on factors such as category of disability, significance of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience.
- a. Federal Policy Letter on LRE, Education for the Handicapped Law Reporter (EHLR) page 211:384, March 21, 1986: Federal and state policy specifically forbid selecting a placement in a segregated setting over placement on a regular school site if the placement decision is based on administrative factors and not on the students' needs. **A school cannot use lack of appropriate placements as an excuse for denying students with disabilities their right to an education in the LRE.** Although a school district can contract with the county to provide programs for students, the district cannot use this arrangement as an excuse to deny a student an education in the LRE.
- a. HERE: Mike Winsor says that Tyler will be placed in a Special Day Class (SDC) four days a week with Loretta Jackson. The class consists of 3 to 5 year olds with mixed disabilities, although there are no other autistic students. It is questionable whether the District has "conveniently" placed Tyler in a SDC or has truly determined the least restrictive placement for Tyler based on his unique needs.

1. **Districts must provide a full continuum of alternative placements to meet a child's unique needs:** Mike Winsor says the district is "not allowed" to provide services or programs at a private school.

a. 34 C.F.R. Sec. 300.551; Education Code 56361: School districts must provide students with disabilities with **maximum opportunities** to interact with nondisabled peers. The law requires school districts to provide a **full continuum of alternative placements** to ensure that students receive services in the Least Restrictive Environment. The full continuum must include the following:

- Regular class placement
- Regular class with resource or itinerant instructional services
- Regular class with special education related services
- Special class or special schools (either of which often also involve the provision of related services)
- Nonpublic schools
- State schools for students with low incidence disabilities
- Instruction in settings other than classrooms (such as homes or hospitals)

b. HERE: The District lied to the parents when they told them: "We aren't really allowed, by law, to provide services or programs at private schools." On the contrary, the District must provide this as an option if the public school system does not have an appropriate placement. Again, the placement must be specifically designed to meet Tyler's unique needs and place him in the LRE-- allowing him to interact with his nondisabled peers. Whether this placement is appropriate really hinges on details of Tyler's needs.

1. **Tyler's unique needs must be met:** Steve Mason says that Tyler doesn't have any serious behavior problems warranting any direct behavior intervention.

a. 20 U.S.C. 1414(d)(3)(B); 34 C.F.R. 300.346(a)(2): **Development of the IEP:** Consideration of Special Factors must be part of the development of the IEP by the team.

i. In the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

i. (PBIS) 20 U.S.C. 1414(d)(3)(B)(i); 34 C.F.R. 300.346(a)(2)(i):
Positive Behavioral Interventions and Supports

1. Systems Change
1. Environmental Alterations
1. Skills Instruction
1. Behavioral Consequences

2. Social interaction, and individual choice. Positive behavior interventions do not include pain or trauma.

- b. Deal v. Hamilton County Bd. Of Educ., 42 IDELR 109 (6th Cir. 2004): “The facts of this case strongly suggest that the school system had an unofficial policy of refusing to provide one-on-one ABA programs and that school system personnel thus did not have open minds and were not willing to consider the provision of such a program... The clear implication is that no matter how strong the evidence presented by the Deals, the school system would still have refused to provide the services. This is **predetermination**... There is a point at which the **difference in outcomes** between two methods can be so great that provision of the lesser program could **amount to denial of FAPE**.”
- c. HERE: There are several overlapping issues here. First, the District’s policy, an employee’s opinion, whether the District currently has the program, or whether they have ever even considered the program for another child is of no consequence. Tyler’s unique needs must be met with an appropriate program. Moreover, Mrs. Conner is an equal participant in the IEP meeting, and even though the District may have not seen the behavior problems at school, does not mean that they do not exist. If the District still does not offer a placement with behavioral intervention, Mrs. Conner may want after for an independent educational evaluation and schedule a new IEP meeting to discuss whether an ABA program would be appropriate for Tyler.
-



6

1. **IDEA requires Tyler’s program to be individualized to meet his needs:** Steve Mason tells Diane Conner it is GUSD policy to only provide behavior intervention to students with serious behavior problems.
- a. 34 CFR 300.26: As discussed above, the District cannot say that only children with serious behavior problems receive a certain type of services. If Tyler requires an ABA benefit from his education, it must become part of his IEP.
2. **The state’s education code does not override the Federal IDEA:** Steve Mason tells Mrs. Conner about GUSD policy regarding behavior intervention.
- a. As discussed above, federal law trumps state law and district policy if there is a conflict. It does not matter what GUSD’s policy regarding behavior intervention is. Federal law says if Tyler needs it to meet his unique needs, it must be included in his IEP.

3. **WHO IS RESPONSIBLE FOR PROVIDING BEHAVIOR SERVICES?** DIANE CONNER SAYS SHE WANTS AN INTERVENTION PROGRAM FOR TYLER AND MIKE WINSOR SAYS THE EARLY START COORDINATOR MAY BE ABLE TO HELP.
- a. Part B of IDEA provides funding to states to provide a free, appropriate public education (the educational program of special education and related services required by a child with a disability) to children with disabilities from **ages 3 to 21**. Under IDEA, states have a duty to provide Part B services to all "children with disabilities" starting at age 3. [34 CFR 300.121](#) (c).
 - b. [20 USC 1419 \(a\)\(2\)](#): A state receiving a Part B Preschool Grant may, at its discretion, provide special education and related services to 2-year-old children with disabilities who will turn 3 during the school year.
 - c. [34 CFR 303.16 \(b\)](#): States may also choose to establish an eligibility category for children who are "at risk" of being developmentally delayed if they do not receive **early intervention services** under the program.
 - d. A district may not use cut-off dates for providing preschool services under Part B to 3-year-olds. [34 CFR 300.121](#) (c)(1) **makes it clear that a child with a disability must receive FAPE no later than his third birthday**. As a result, a school district may not use cut-off dates for determining eligibility if the effect of doing so would deny provision of FAPE beginning on the child's third birthday. This includes provision of extended school-year services to a child who turns 3 during the summer months, if the child's IEP team determines that the child needs ESY services to receive FAPE. [34 CFR 300.121](#) (c)(2); *Letter to Anonymous*, [22 IDELR 980](#) (OSEP 1995).
 - e. HERE: Mrs. Conner has expressed her desires to have Tyler in a behavior intervention program. Mike Winsor has shirked off the District's responsibility to provide Tyler with the requested program. If the District's assessments do not support Mrs. Conner's opinion regarding Tyler's needs, she should request an Independent Education Evaluation (IEE) in the area behavior. If Mrs. Conner obtains a behavioral assessment, the District must consider that assessment during an IEP. Under certain circumstances, Mrs. Conner may also be reimbursed for this IEE.
4. **PARENTS ARE NOT OBLIGATED TO CONSENT TO THE ENTIRE IEP AND DO NOT HAVE TO CONSENT AT THE TIME OF THE IEP MEETING.** MIKE WINSOR TELLS MRS. CONNER TO "SIGN RIGHT HERE WHERE IT SAYS, 'I CONSENT.'"
- a. When consent is required under IDEA, it must be "fully informed" to be valid. [34 CFR 300.500](#) (b)(1), [34 CFR 300.500](#) (b). In order to be informed, the consent must meet the following requirements:

1. Parents must be informed of **all information relevant to the activity** at issue in their native language or other mode of communication. [34 CFR 300.500](#) (b)(1).
2. Parents must sign a **written consent** form that describes with **specificity the agreed activity**, for example, evaluation of specific placement that is to be carried out. [34 CFR 300.500](#) (b)(2).
3. The school district must **make the parent aware that the granting of consent is voluntary and may be revoked** at any time. [34 CFR 300.500](#) (b)(3).

b. HERE: The District is pressuring Mrs. Conner into signing the IEP without informing her that she can reject the entire IEP, consent to all, or consent to parts. Mike Winsor tries to scare into signing her by threatening: "If you don't sign today, we can't get Tyler's program up and running and it really delays the process. It's best if you sign right now, otherwise Tyler won't get any special education services."

5. **ALL REQUIRED COMPONENTS OF THE IEP WERE NOT DISCUSSED: MIKE WINSOR HANDED OUT AN IEP MEETING AGENDA AT THE BEGINNING OF THE MEETING.**

- a. 20 U.S.C. 1414(d)(1)(B): Content of the IEP:
 - i. A statement of the **student's present levels** of educational performance, including how the student's disability affects the child's involvement, and progress in general curriculum;
 - ii. A statement of **measurable annual goals, including benchmarks or short-term objectives**, related to (a) meeting the student's needs that result from his or her disability to enable the student to be involved in and progress in the general curriculum, and (b) meeting the student's other educational needs that result from the disability;
 - iii. A statement of (a) the **specific special education and related services** and (b) supplementary aids and services to be provided to, or on behalf of, the student and the program modifications or supports for school personnel that will be provided for the child;
 1. **Related Services:** 20 U.S.C. §1414, 1401(22); 34 C.F.R. 300.24
 - a. Audiology
 - b. Counseling Services
 - c. Early Identification and assessment of disabilities of children
 - d. Medical Services
 - e. Occupational Therapy

- f. Orientation and Mobility Services
 - g. Parent Counseling and Training
 - h. Physical Therapy
 - i. Psychological Services
 - j. Recreation
 - k. Rehabilitation Services
 - l. School Health Services
 - m. Social Work Services in Schools
 - n. Speech Pathology
 - o. Transportation and Related Costs
- iv. An explanation of the **extent, if any, to which the child will not participate with non-disabled children** in general education and other general curriculum activities.
 - v. A statement of any **individual modifications in the administration of state and district-wide assessments of student achievement**, or if the IEP team determines that the student will not participate in a particular assessment or part of an assessment, a statement of why the assessment is not appropriate for the student and how the student will be assessed;
 - vi. The **projected dates from beginning the listed services and modifications** and the anticipated frequency, location, and duration of those services and modifications;
 - vii. Beginning at age 14, and updated annually, a **statement of the transition service needs** of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced placement courses or a vocational education program);
 - viii. Beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed **transition services** for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and
 - ix. Beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been **informed of his or her rights** under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title; and
 - x. A statement of:
 - 1. How the child's progress toward the annual goals described in clause (ii) will be measured; and
 - 2. How the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their non-disabled children's progress, of –

- a. Their child's progress toward the annual goals described in clause (i) and
 - b. The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
- b. HERE: The District is required to discuss all of the above areas, which must be addressed as appropriate based on Tyler's age as part of his IEP.