



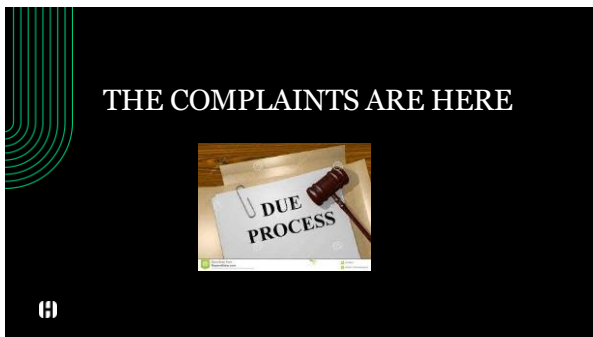
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CAUTION

This presentation contains general recommendations and specific information and should not be relied upon for any specific purpose without consultation with legal counsel and in the context of specific facts and circumstances.



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COMPLAINT HOT SPOTS

- Composition of IEP Team members;
- Measurability of goals and objectives in the IEP;
- Comprehensive evaluations;
- IEP Placement issues (LRE);
- IEP Implementation issues (documentation)
- Manifestation Determination Reviews;
- Content of Prior Written Notice (particular emphasis on Options Considered and Not Selected;
- Restraint and Seclusion;
- Shortened Days; and
- Appropriate documentation of student need in the context of center-based programming.

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OVERARCHING EXPECTATIONS

- Three overall expectations of the law:
 - Students with disabilities receive a free appropriate public education
 - Students with disabilities are served in their least restrictive environment.
 - Services and supports to students with disabilities should be based on student need and in conformity with the IEP or Section 504 Plan.

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SCHOOL DISTRICT OBLIGATIONS HAVE NOT CHANGED

- No one-size fits all approach to addressing student needs.
- All eligible students have a right to a free appropriate public education ("FAPE") in the least restrictive environment ("LRE").
- COVID-19 has not changed school districts' obligation to put FAPE on the table.
- Recent events have not changed school districts' obligation to put FAPE on the table.
- Staff/personnel shortages have not changed school districts' obligation to put FAPE on the table.

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WHAT IS FAPE AND HOW DO WE BUILD IT?

• Special education and related services:

- That are provided at public expense, under public supervision and direction, and without charge to the parents;
- That meet the standards of the State Education Agency, which would include IDEA and its implementing regulations;
- That include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- That are provided in conformity with an IEP, that meets the requirements set forth in IDEA regulations.

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THE ROWLEY DEFINITION OF FAPE

- First US Supreme Court case to define FAPE;
- Involved a hearing-impaired student and the need for a sign language interpreter;
- The Court held that FAPE required a two-prong test:
 - Did the IEP Team comply with procedural safeguards?
 - Was the IEP Reasonably calculated to deliver educational benefits to the student?
- The Court did not return to that question until last year.
- *Board of Education of the Hendrick Hudson Schools v. Rowley* (1982).

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ENDREWF.

- Court revisited *Rowley* due to a split in the federal courts;
- Schools must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."
- For most students, FAPE requires full access to the curriculum and robust integration with non-disabled peers;
- For some students who are "not fully integrated in the regular classroom and not able to achieve on grade level" the IEP need not aim for grade level advancement;
- The student's program must be appropriately ambitious in light of the circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.
- The goals may differ, but every child should have the chance to meet challenging objectives.

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ROWLEY + ENDREW F. = FAPE

- Rowley stresses the importance of procedural compliance as an important, but not the only, element;
- Rowley and Endrew F. identify progress as an important element of FAPE;
- Both agree "reasonable" and "appropriate" progress is the applicable standard;
- A school is not expected to furnish "every special service necessary to maximize each handicapped child's potential";
- There continues to be no bright line rule for determining appropriate progress – it is kid-by-kid and IEP-by-IEP;
- When a FAPE dispute arises, school districts must provide "cogent and responsive" explanation to prove IEP provides FAPE;
- Data, data, data

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IMPORTANT CONSIDERATION

- The duty to provide FAPE rests **solely** with the district.
- While parent (and, where applicable, the student) choice should be considered, "parental choice *should never be the sole determining factor*. Parents have significant rights to disagree with the determination of the IEP and are to be an integral part of the IEP decision-making process. However, lawmakers never intended that the parents could simply refuse special education services and have veto power at an IEP. The 'veto power' of the parents is vested in the hearing process." Emphasis added.
- *In re Student with a Disability*, 106 LRP 57523 (SEA MI 2001).

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STUDENT PROGRESS AS A MEASURE OF PROVIDING FAPE

FAPE IS NOT A PRIVILEGE, IT'S A RIGHT!

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CAN'T MEASURE PROGRESS WITHOUT DATA

- The measurement of progress is essential to determining whether a student with a disability is receiving a FAPE.
- IDEA enumerates a number of IEP requirements for measuring student progress:
- Measurable IEP Goals
 - Progress or lack thereof progress regarding as an indicator
- Grades in the general education curriculum
 - Progress or lack thereof as an indicator
- Present level of academic achievement and functional performance ("PLAAFP")

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BEDROCK OF IEP IS THE PLAAFP

- Provides the foundation for rigorous supports for the student's success.
- Is the basis for which all other components of the IEP are developed.
- Provides an overview of the factors that impact the student's performance and subsequent development of services and programs to meet the student's unique learning needs.
- Each area of need identified in the student's PLAAFP must be addressed somewhere in the IEP.
- This section, in its entirety, is used to describe the student's current performance in areas affected by his/her disability.
- The information and **data** that is included in the PLAAFP steers the ship. It is the rudder for the IEP.

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DATA IS THE KEY!



- Data is the key to drafting quality PLAAFPs, which leads to data-based, student-centered goals and objectives and accommodations and supports.
- Data regarding implementation of plans continues to be a significant issue.
- Without good, consistent collaboration between special education and general education, may continue to be an issue.

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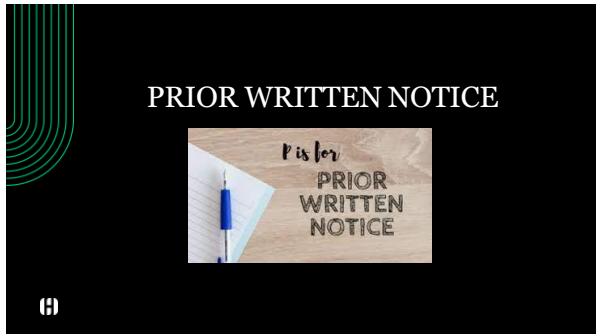
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CREATING DEFENSIBLE PLAAFPS

- Do your PLAAFP statements pass the "California" or "stranger" test?
- Be specific and clear by using quantifiable data and precise language.
 - Vague statements in the PLAAFP such as "the student has average ability in ..." are problematic and may lead to goals that are either inappropriate or are not measurable.
 - Don't forget to quantify social/emotional skills and behavior too. This is especially true during those off-evaluation years.
- Review and breakdown the assessment data in layman's terms.
- Be intentional regarding language that describes a student doing something x out of x times.
 - Does the child do the activity consistently x out of x times or just on the day(s) assessed?
- Be sure to describe concretely teacher observation/data about day-to-day functioning.

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BACK TO BASICS

- Districts must provide prior written notice whenever it proposes or refuses to initiate or change the student's identification, evaluation, or educational placement or the provision of a FAPE to student.
- Two types of notice required:
 - Notice of the meeting, the purpose(s) of the meeting, and who will be the district's invitees to the meeting.
 - Options considered but not selected.
- Both types of notices are important, but it is often the later that gets districts into legal hot water.

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BACK TO BASICS: CONTENTS OF NOTICE

- A description of the action proposed or refused by the district.
- An explanation of why the district proposes or refuses to take the action.
- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
- A statement that the parents have protection under Part B's procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- Sources for the parent to contact to obtain assistance in understanding the provisions of Part B.
- A description of other options the IEP team considered and the reasons why those options were rejected.
- A description of other factors relevant to the district's proposal or refusal.

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LEVEL OF DETAIL REQUIRED?

- Must provide sufficient detail to allow parents to participate in the child's educational services decisions in an informed way.
- Tailor prior written notice to highlight parent's engagement.
- Focus on facts, not interpretation.

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QUESTIONS



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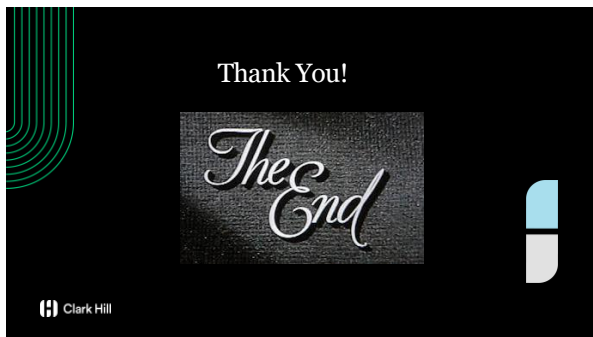
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