



Ensuring Meaningful Parental Participation

**Integrated MTSS Conference
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Jonathan P. Read is a founding partner in the San Diego area office. His practice focuses on student-related and special education law. A highly respected attorney with an outstanding reputation for helping build legally compliant, student-focused programs, Jonathan has successfully delivered comprehensive special education training throughout the state.

Jonathan represents school districts and other educational agencies in all facets of due process and disciplinary proceedings under the IDEA and Section 504. He is admitted to practice in California, the U.S. District Court for the Southern, Central, and Eastern Districts of California, and has appeared on multiple occasions before the Ninth Circuit Court of Appeals. He represented the National School Boards Association as *amicus curiae* in the seminal U.S. Supreme Court case, *Endrew F. v. Douglas County School District*.

A popular speaker, Jonathan is frequently requested to present before the Association of California School Administrators, the California School Boards Association, and at national events sponsored by LRP. His article entitled "Access to Achievement: The Changing Landscape of FAPE" appeared in the Summer/Fall issue of *Urban Perspectives*. (Vol. 15, No. 2.) Jonathan has also developed a specific expertise in representing school districts in matters involving English language learners. Jonathan co-authored the book *ELLS With Disabilities: A Guide to Leading Assessment and Intervention* for LRP Publications.

Jonathan serves as an adjunct professor at the University of San Diego School of Law, where he teaches all aspects of education law, including labor and employment, school governance, charter schools, and constitutional issues facing students.


Jonathan's professional career in education began as a one-to-one aide for students with severe disabilities and as an ELL aide in the San Diego Unified School District. He subsequently taught elementary school in the Poway Unified School District. He received his Juris Doctor from the University of California, Los Angeles School of Law. He received his bachelor of arts degree in music and his multi-subject teaching credential from the University of California, San Diego.



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Rule of Thumb

All communication (verbal and written) must be child-centered.

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What We'll Cover . . .

- Parent rights
- Who is a Parent?
- Conducting the IEP Meeting
- Formulating and Implementing the IEP
- Questions

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Parent Rights

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Introduction

- One of the cornerstones of special education law is maximum practical participation by parents in development of each student's IEP
- Many protections are built into IDEA to facilitate this participation
- Due process filings and state compliance complaints alleging that parents were excluded from IEP process have increased tremendously over past 10 years (e.g., predetermination claims)

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Parent Participation can Implicate a Student's Right to a FAPE

- Two-prong test for determining whether a student was offered FAPE.
 - Procedural: Has the district complied with the procedures set forth in the IDEA?
 - Substantive: Is the IEP reasonably calculated to enable the student to obtain some educational benefit? (e.g., achieve passing marks and advance from grade to grade)?

Board of Ed. of Hendrick Hudson Central School Dist., Westchester City v. Rowley (1982) 103 LRP 53214.

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Test of Procedural Compliance

1. Impeded right to FAPE
2. Significantly impeded parents' right to meaningfully participate in the decision-making process
3. Caused educational deprivation

20 U.S.C. § (f)(3)(E)(ii); See *W.G. v. Board of Trustees of Target Range Sch. Dist.* No. 23 (9th Cir. 1992.) 18 IDELR 1019.

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Parents' Own Rights Under the IDEA

- Facts:
 - Parents of 6-year-old student with autism involved in an administrative due process dispute
 - Parents appealed the decision to District Court without legal counsel. District Court affirmed the hearing officer's decision
 - Parents appealed to the 6th Circuit Court of Appeals, which dismissed the case
 - 6th Circuit determined that the right to a FAPE "belongs to the child alone."
 - As a consequence, while non-lawyer parties can represent themselves, they cannot represent other individuals
 - 6th Circuit determined that the appeal could not proceed unless parents obtained legal counsel
 - Parents appealed to U.S. Supreme Court

Winkelman v. Parma City Sch. Dist. (2007) 550 U.S. 516.

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Parents' Own Rights Under the IDEA

- Decision
 - The IDEA states that its "purpose is to protect the rights of children with disabilities and parents of such children."
 - Parents have procedural protections
 - Parents have the right to participate in the substantive formulation of an educational program
 - Parents have the right to challenge FAPE through administrative proceedings, including obtaining their own potential remedies (e.g., reimbursement)

Winkelman v. Parma City Sch. Dist. (2007) 550 U.S. 516.

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Practice Pointer

Communicate in a manner
that your grandmother could
understand!



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Who Is a Parent?

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Definition of “Parent”

- Biological or adoptive parent
- Foster parent (if authority of biological or adoptive parent limited by court order)
- Guardian authorized to act as parent or make educational decisions
- Individual acting in place of parent, including relative with whom child lives or other individual responsible for child's welfare
- Surrogate parent who has been appointed because a parent can not be identified or located; the student is a ward of the state and not residing with a foster parent; or a student is homeless and not with a parent

34 C.F.R. § 300.30(a); WAC 392-172A-01125


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Conducting the IEP Team Meeting

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What Is (and What Is Not) an IEP Team Meeting?

Three situations that do not require parental participation:

- Informal, unscheduled conversations among staff
- Staff discussions on issues such as teaching methodology, lesson plans or coordination of services
- Preparatory activities to develop proposal or response to parent proposal that will be discussed at later meeting

34 C.F.R. § 300.501(b)(3)

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IEP Team Meeting Notice

Content:

- Purpose, time and place of meeting
- Who will be attending
- Inform parents of right to bring individuals with knowledge or special expertise about student
- Note: Special rules apply for notice of meetings to discuss postsecondary transition services

34 C.F.R. § 300.322

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IEP Team Meeting Notice

Timing:

- Early enough to ensure parents will have opportunity to attend
- OSEP suggests 10-day advance notice, but no formal requirement

34 C.F.R. § 300.322; *Letter to Constantian* (OSEP 1990) 17 IDELR 118.

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Deficient Notice as Denial of FAPE

- If faulty (or tardy) notice deprives parent of ability to participate in IEP process, it can be basis for finding of denial of FAPE
- But when parents are still able to participate fully despite faulty notice, procedural violation generally will not be sufficient to deny FAPE

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Practice Pointers: IEP Team Meeting Notice

- Case decisions on improper notice have focused on following issues:
 - Providing sufficient time in advance of meeting
 - Listing individuals being invited to attend
 - Stating purpose of meeting
 - Accurately identifying time, date and location
- Document and make copies of all notices sent, as paper trail may be important

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Practice Pointers: IEP Team Meeting Notice

- When district intends to hold virtual IEP team meeting, be sure meeting notice includes name of virtual platform (with instructions on how to participate)
- Differentiate between link to meeting and notice
- Best practice is to send link on same day you send notice, as well as on day before meeting as reminder

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Scheduling IEP Team Meetings

- "Mutually agreed time and place"
- Standard of reasonableness should apply
- Not unreasonable to schedule team meetings during regular business hours
- But there might be circumstances where parents' employment situation restricts availability; districts should be flexible in those instances

34 C.F.R. § 300.322(a)(2); Letter to Thomas (OSEP 2008) 51 IDELR 224.

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Conducting IEP Team Meetings Without Parents

- Parents have absolute right to attend all IEP team meetings (even when districts are certain they will reject proposed course of action)
- District must make every effort to secure presence of parents

Shapiro v. Paradise Valley Unified School Dist. (9th Cir. 2003) 38 IDELR 91.

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Conducting IEP Team Meetings Without Parents

- Meetings may be conducted without parents only if district “is unable to convince parents that they should attend”
- Must keep records of attempt to arrange meeting
 - Log of phone calls
 - Copies of correspondence
 - Document visits to home/work

34 C.F.R. § 300.322(d).

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Case Example

- School wanted to hold IEP meeting before annual review deadline
- Parent could not be present during various dates proposed by team (and did not want to participate by phone), so meeting proceeded without him
- Failure to include Parent infringed on ability to participate, denied FAPE
- 9th Circuit: “Under the circumstances of this case, the [school’s] decision to prioritize strict deadline compliance over parental participation was clearly not reasonable”

Doug C. v. State of Hawaii Dep’t of Educ. (9th Cir. 2013) 61 IDELR 91.

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Interpreters at IEP Team Meetings

- Districts must take whatever steps are necessary to ensure parents understand proceedings of meeting
 - Notifying parents in advance in the parent’s native language of the availability of interpretation and translation services at no cost to the parent
 - Includes arranging for interpreter for parents with deafness or whose native language is other than English
 - Documenting language in which families prefer to communicate and whether qualified interpreter for the student’s family was provided
 - OCR: Failure to provide interpreter and written translation during IEP process may violate Section 504

34 C.F.R. § 300.322(e); WAC 392-172A-05001; *Victor Valley (CA) Unified School Dist.* (OCR 2007) 50 IDELR 141).

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Recording IEP Team Meetings

- OSEP: State educational agency or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings
- If a public agency or SEA has policy that limits or prohibits use of recording devices at IEP meetings, policy must provide for exceptions that ensure that parent understands IEP or IEP process
- In Washington, parent may request consent to record meetings in accordance with applicable district policy; any recording that is maintained by district is "education record" within meaning of FERPA

Letter to Anonymous (OSEP 2003) 40 IDELR 70; WAC 392-172A-05001.

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Right to Representation at IEP Team Meetings

- OSEP has acknowledged that both districts and parents may invite attorneys to IEP team meeting as part of team if attorneys "possess knowledge or special expertise regarding the child." OSEP has also stated that *each party decides for themselves* who has knowledge or special expertise.
- OSEP: "An attorney's presence would have the potential for creating an adversarial atmosphere that would not necessarily be in the best interests of the child. Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged"

Letter to Clinton (OSEP 2001) 37 IDELR 70.

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Formulating and Implementing the IEP

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Predetermination

- Occurs when districts decide on IEP content/issues prior to IEP team meeting precluding meaningful parental participation
- Allegations of predetermination frequently arise with respect to:
 - Preparatory meetings
 - Draft IEPs
 - (Lack of) meaningful discussion at IEP meeting

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Preparatory Meeting

- Districts may engage in preparatory activities to develop a proposal or response to parent proposal that will be discussed at later meeting
- Example: Staff may review assessment recommendations or placement options in advance of meeting, but must discuss those options with parents and make decisions at the IEP meeting
- Difference between preparation and predetermination is sometimes hazy; **be weary of electronic communication**

34 C.F.R. § 300.501(b)

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Draft IEPs

- Permissible to develop draft IEP
 - Share with parents before or during meeting
 - Must be used for discussion purposes only
 - Cannot be presented as completed document
- OSEP: If draft IEP is developed, district should:
 - Make clear to parents at outset of meeting that it is preliminary recommendation for review and discussion
 - Provide parents with copy; Remember, **the IEP is the copy that the parents have after the meeting!**

Letter to Helmut (OSEP 1990) 16 IDELR 503; 71 Fed. Reg. 46678 (Aug. 14, 2006).

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Case Example

- Parents requested to change student's placement focusing on long-term goal of 100 percent inclusion in general education setting
- At parents' request, district provided draft IEP prior to annual IEP review
- Draft discontinued paraeducator support and noted that student would spend 85.9 percent of his time in general education setting
- Parents filed complaint alleging predetermination
- State DOE rejected claim, noting that existence of draft IEP does not alone indicate predetermination
- Parents raised no concerns after receiving draft IEP, nor did they object during two facilitated IEP meetings lasting almost seven hours going through details of draft IEP

Mercer Island School Dist. (SEA WA 2021) 78 IDELR 299.

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Practice Pointers: Draft IEPs

Consider the following to avoid any appearance of predetermination when using draft IEPs

- Stamp or write "DRAFT" on each page
- Ask for parent feedback throughout meeting
- Keep detailed notes and handwrite changes on draft
- Do not complete offer of placement and services prior to meeting
- Consider saving draft with handwritten notations to allow comparisons with final IEP

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Meaningful Discussion

- Parents' presence at meeting is not enough
 - Must have opportunity to voice concerns
 - Must have their input considered by the team
 - Must have opportunity to ask questions and be provided with meaningful answers
- "Take it or leave it approach" evidences predetermination

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Case Example

Progenitor of virtually all subsequent predetermination claims

- IEP team discussed IEP for Student with autism with Parents without mentioning the Lovaas-style ABA as possible methodology
- District had consistently rejected providing Lovaas-based ABA services all students, rejecting validity of Lovaas
- District staff told Parents that they could not ask questions during IEP team meeting at which methodology was discussed
- District's proposed IEP included teaching methods that would encompass one-to-one discrete trial teaching

Deal v. Hamilton Co. Bd. Of Ed. (6th Cir. 2004) 42 IDELR 109.

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Case Example

- 6th Circuit found that District denied Parents opportunity to meaningfully participate in IEP process
- Parents' involvement was merely "matter of form" and "after the fact," because district had pre-decided student's program and services
- District had unofficial policy of refusing to provide 1:1 ABA programs because it had previously invested in another methodology program
- District's predetermination violation caused student substantive harm and therefore denied him FAPE

Deal v. Hamilton Co. Bd. of Educ. (6th Cir. 2004) 42 IDELR 109.

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Case Example

- Facts:
 - Guardian withdrew student from district in 2007 and enrolled him in private placement where he remained until graduation in 2014
 - Guardian and district litigated reimbursement claims each year
 - 9th Circuit addressed claims regarding, among other things, preventing guardian from full participation in IEP meeting

Baquerizo v. Garden Grove Unified Sch. Dist. (9th Cir. 2016) 116 LRP 27020.

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Case Example

- Decision:
 - 9th Circuit rejected all claims and denied reimbursement
 - Guardian fully participated in IEP process
 - District was not required to discuss every option on placement continuum

Baquerizo v. Garden Grove Unified Sch. Dist. (9th Cir. 2016) 116 LRP 27020.

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Case Example

“Guardian has pointed us to no statute or case law—and we can find none—indicating that a [parent] is prevented from ‘participating’ in the IEP process if the school district first prepares an offer to be discussed at the IEP meeting, instead of conducting a free-wheeling discussion and then creating an offer, and we see no logical reason that such would be the case.”

Baquerizo v. Garden Grove Unified Sch. Dist. (9th Cir. 2016) 116 LRP 27020.

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Meaningful Discussion

- Be careful of statements at IEP meeting suggesting: “Here’s what we decided”
- Be careful not to develop goals specific to a particular program or school site
- When option is proposed, seek parents’ input/response
- Give parents enough information about all possible relevant placements so that they can take part in discussions
- Ensure enough time for questions

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Other Parent Rights Re: IEP Development

- Documenting Parent Concerns and Objections
 - IDEA requires team to consider concerns for enhancing education of student
 - Team should specifically ask parent about concerns and indicate on IEP document that it has done so

34 C.F.R. § 300.324(a)(2); 34 C.F.R. § 300.322(f).

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Seek parental input at each major juncture:

- Present levels
- Areas of Educational Need
 - For which special education is required
 - Maybe related services
- Goals
- Placement (Special Education)
 - Supplementary Aids and Services
- Supports for General/Special Education
 - Related Services
 - Supplementary Aids and Services
 - Accommodations/Modifications

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Other Parent Rights Re: IEP Development

- IDEA requires district to provide IEP copy at no cost
- Right to Be Informed of Student's Progress
 - Each IEP must include description of how and when parents will be informed of progress student is making toward meeting annual goals (such as through use of quarterly or other periodic reports, concurrent with issuance of report cards)
 - Includes progress reporting on postsecondary goals
 - Progress reporting is *critical* in post *Endrew F.* world

34 C.F.R. § 300.320(a)(3); Letter to Pugh (OSEP 2017) 69 IDELR 135.

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Other Parent Rights Re: IEP Development

▪ Right to Have IEP Team Consider IEE

- IEP team has duty to consider any IEE shared by parents, if IEE meets district criteria
- Duty to consider does not equate to duty to accept recommendations
- No IDEA provision setting parameters for what it means to “consider”

34 C.F.R. § 300.502(c).

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Take Aways . . .

- Understand broad range of responsibilities to ensure meaningful parent participation in IEP process
- Attempt to develop ongoing and collaborative relationship with parents
- Emphasize meaningful participation as the standard for IEP team meetings and entire IEP development process

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Grandma revisited!



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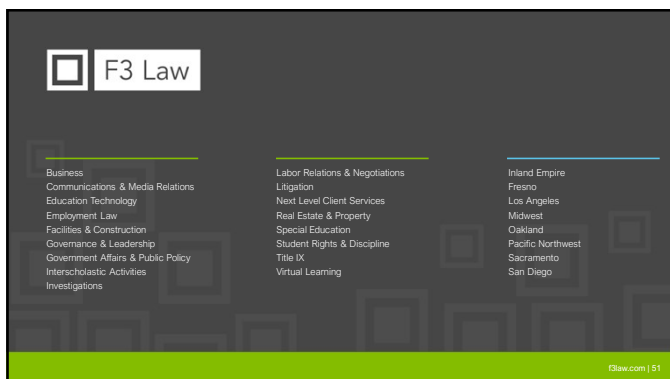
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