



# SPED 2025 Legal Update and Refresher

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WASA

**Carlos Chavez**  
Pacifica Law Group LLP



# Agenda

- Implications of New Administration(s)
  - Federal & State
- Burden of Proof
  - Applicable standards
- Age 22
  - What is a “regular diploma”?
- Child Find
  - Dyslexia scenarios
- Evaluations (and IEPs) for Parentally Placed Private School (PPPS) students
  - When and why to move forward?
- IEP Development
  - Clear enough for parental understanding and involvement?
- Exclusionary Discipline
  - Comparable, Equitable & Appropriate (CEA) Educational Services
- QUESTIONS

# New Administration(s)

- Federal government
  - U.S. Department of Education
  - ???
- Washington state government
  - SPED funding
  - Isolation & Restraint changes?
  - I2801 implementation

# Burden of Proof

- *Schaffer v. Weast*, 546 U.S. 49 (2005)

“Assigning the burden to schools might encourage them to put more resources into preparing IEPs and presenting their evidence, but IDEA is silent about whether marginal dollars should be allocated to litigation and administrative expenditures or to educational services. There is reason to believe that a great deal is already spent on IDEA administration, and Congress has repeatedly amended the Act to reduce its administrative and litigation-related costs. The Act also does not support petitioners’ conclusion, in effect, that every IEP should be assumed to be invalid until the school district demonstrates that it is not. Petitioners’ most plausible argument—that ordinary fairness requires that a litigant not have the burden of establishing facts peculiarly within the knowledge of his adversary, *United States v. New York, N. H. & H. R. Co.*, 355 U. S. 253, 256, n. 5—fails because IDEA gives parents a number of procedural protections that ensure that they are not left without a realistic chance to access evidence or without an expert to match the government.”

# Burden of Proof (cont'd)

- SB Bill 5883 – Effective 6/6/24 in Washington
  - (1) A LEA has the burden of proof, including the burden of persuasion and production, whenever it is a party to a due process hearing regarding the identification, evaluation, reevaluation, classification, educational placement, disciplinary action, or provision of a free appropriate public education for a student with a disability.
  - (2) A parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement has the burden of proof, including the burden of persuasion and production, on the appropriateness of such placement.

# Age of Eligibility

## WAC 392-172A-02000 Students' Right to a FAPE

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

- (a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education services; or
- (b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or
- (c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education services. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or

# Age of Eligibility (cont'd)

- OSPI's current written guidance:
  - Questions and Answers: Providing Special Education Services Until Age 22
    - <https://ospi.k12.wa.us/sites/default/files/2024-06/guidance-specialeducation-qa-svcs-until-22.pdf>
- Open issues
  - Eligibility ends on 22<sup>nd</sup> birthday or end of that school year, like current rule?
  - How will funding for ongoing services past age 21 be addressed, including Safety Net?
    - See discretion noted in OSPI's guidance above
  - How will comp ed be provided/funded for students exited at age 21 who had not yet received a regular diploma or been found via reevaluation to no longer qualify for special education?

# Age of Eligibility (cont'd)

- What is a regular diploma?
  - See WAC 392-172A-02000(2)(b) (“A regular high school diploma **does not include** a certificate of high school completion, or a general educational development credential”).
- May become a disputed issue going forward
  - See, e.g., *In re Edmonds Sch. Dist.*, 2023-SE-0173 (Dec. 12, 2024) (rejecting claim that district **inappropriately issued adult student a “regular” diploma** and that adult student was entitled to additional services from the district)
  - Note Burden of Proof issue re: courses **“fully aligned with State standards”**  
available at: <https://ospi.k12.wa.us/sites/default/files/2025-01/2023se0173fof.pdf>



# Child Find - Dyslexia Case Study # 1

- Student A is in the 3<sup>rd</sup> grade. They have been enrolled in the District's general education classes since kindergarten. Student A has participated in the District's LAP support the last two school years due to lower reading scores on the District's available reading diagnostics. Student A has shown some degree of progress with their reading scores, particularly in the spring of 2024, but less this school year.
  - After winter break, Parents shared that Student had just been diagnosed with dyslexia. Parents mention the diagnosis to staff and ask whether the District has any dyslexia-specific supports available for Student A. Staff then ask you how to respond.
  - Discuss your potential responses to staff and/or to Parents.

# Child Find - Dyslexia Case Study # 2

- Elsewhere in the District, Student B is a 2<sup>nd</sup> grader. They transferred into the District last fall from another state. Based upon that state's evaluation process, Student B is eligible for special education services under the Other Health Impaired category due to an ADHD diagnosis, with SDI only in Organization.
- Student B is participating in the District's LAP program this school year for reading support. Student B is not making marked progress.
  - Parents of Student B asked whether LAP uses a multi-sensory structured literacy program. They heard about a private school in the area that reports great progress with their Orton-Gillingham-based program and Parents asked the principal whether Student should attend that private school this summer to supplement their learning.
- How would you respond to principal **and/or** Parents?

# Evaluation Issues

- Duty to Evaluate PPPS Student
  - ***Newport-Mesa Unified Sch. Dist. v. DA, (9th Cir., 2024)***
    - 9<sup>th</sup> Circuit upheld decisions below that school district **not required to complete triennial reevaluation of private school student within 3-year timeline**
      - Timelines are a procedural obligation and subject to “harmless error” analysis
      - Delay in initiating reevaluation that caused district to exceed 3-year timeline was **harmless because Parents had already made deposit for continued private placement**
    - Court reiterated its standard for offers of FAPE to privately placed students
      - School districts **only** obligated to offer evaluation or develop new IEP for such students within their boundaries **where the parent asks for an IEP offer**
  - *See also Letter to Eig (OSEP, 2009)*
    - Duty to evaluate PPPS students – resident vs. non-resident obligations

# Evaluations (cont'd)

- “Consideration” of Private Evaluation Data
  - ***Rogich v. Clark County Sch. Dist.*, (D. Nev., 2021)**
    - Federal court reversed lower administrative decision in favor of the school district and found a denial of FAPE by the district not fully adopting private evaluation recommendations on how to implement a specific reading curriculum (O-G)
    - Court found that two IEE reports recommended consistent and exclusive use of O-G reading methodology for student with multiple disabilities in order to benefit, and because the proposed IEPs only identified use of a “multi-sensory approach to instruction” that could potentially confuse Student if used inconsistently, the proposed IEPs denied Student a FAPE
  - How is this decision being used here in Washington by parent attorneys?



# IEP Development

- Required Specificity in IEP for Parent Participation
  - ***Los Angeles Unified Sch. Dist. v. AO, (9th Cir., 2024)***
    - Dispute over whether frequency and duration of district's offer of SLP and audiology services for DHH student provided FAPE
      - Range of 1-10 sessions of SLP totaling 30 minutes per week
      - Range of 1-5 sessions of audiology totally 20 minutes per month
    - Court agreed that the offer was too vague for Parents to understand what was being proposed or assess whether the services were appropriate as developed (or as implemented!)
    - Court reiterated that the district has affirmative duty to make a “clear offer of services” and Parents could not be blamed for not seeking clarification
    - Court rejected claim that district needed that degree of flexibility given existing material failure to implement standard under *Van Duyn*

# IEP Development (cont'd)

- ***P.H. v. Seattle Sch. Dist.*, (W.D. WA, 2024)**

- Parents unilaterally placed Student at a residential program, arguing that Student was refusing to attend school and thus required a residential program. The ALJ agreed, concluding:
  - . . . by the end of the 2021-22 school year, the need for residential placement as the Student's LRE was quite clear. By then, the Student had almost entirely stopped attending school. He was isolated from his peers. He could not succeed at basic first steps to attend school. Rather, he intentionally urinated on his bed in the morning, assaulted his father, hit [staff], damaged property, ran down the block unsupervised, and disrobed after getting a reward for merely putting a shirt on over his pajama top. From March through June, the Student attended school on 10 out of 69 available days.
- The ALJ's Order was overturned by the federal court, based in part upon the Court's determination that the ALJ:
  - Failed to give the District credit for engaging experts to develop an appropriate FBA and BIP, and second-guessed whether the new FBA and BIP would help improve Student's behavior
    - BIP was not implemented until 16 days before end of the school year and Student attended 4 of those days
  - Failed to properly analyze under the four-factor *Rachel H.* test whether residential placement was Student's LRE
    - Academic benefit; non-academic benefit; effect of student on classroom and staff; and cost

# IEP-based Limitations on Exclusionary Discipline

## *Ten-Day Rule.*

A district may impose a suspension of not more than 10 consecutive school days to the extent suspension would be imposed on students without disabilities for the same behavioral violation, and

It may impose additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct, so long as those removals do not constitute a change in placement under WAC 392-172A-05155.

WAC 392-172A-05145(2)(a).

# IEP-based Limitations (cont'd)

## ***What is “change of placement” because of exclusionary discipline?***

- (1) For purposes of removals of a student eligible for special education services from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:
- (a) The removal is for more than ten consecutive school days; or
  - (b) The student has been subjected to a series of removals that constitute a pattern:
    - (i) Because the series of removals total more than ten school days in a school year;
    - (ii) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
    - (iii) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

WAC 392-172A05155

So, 10 school days + 1 school day = change of placement?



# CEA Educational Services

- During any suspension, expulsion, or emergency expulsion, the district must provide **the opportunity** to receive educational services in a **CEA setting**
- Exclusions for up to 5 days, at least:
  - Coursework, including homework, from all the student's subjects/classes
  - Opportunity to make up any missed assignments and tests

WAC 392-400-610

# CEA Educational Services (cont'd)

- Exclusions for 6-10 days, at least:
  - Coursework, including homework, from **all subjects/classes**
  - **Access to school personnel** who can provide support in keeping the student current with assignments and course work, and
  - Opportunity to make up any missed assignments and tests
- Long-term suspensions and expulsions
  - Educational services in accordance with WAC 392-121-107
- CEA service opportunities need to be communicated by school – not the family's burden to seek this information out

# Online Programs?

## WAC 392-400-610

Educational services during suspension, expulsion, or emergency expulsion

...

(d) A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

Lessons learned from COVID-19?

Nonetheless, CEA services when considering the student's disability?

# NPA Options?

Public schools are required to provide a free appropriate public education (FAPE) to students with disabilities ages 3–21 who are eligible for special education services. A Nonpublic Agency (NPA) is an entity authorized by OSPI under Chapter 28A.300 RCW to contract with a school district to provide a program of special education services for students whose special education needs cannot be met by their resident school district. An approved NPA provides the student's special education and related services that are determined necessary for FAPE through the individualized education program (IEP) process.

*Available at <https://ospi.k12.wa.us/student-success/special-education/laws-and-procedures/current-nonpublic-agencies>*



# SPED Discipline - Recap

- What are the timelines and what needs to be done?
  - Comparable education services during exclusion
- Does the student have an IEP/504 Plan?
  - If not, should they?
  - If so, manifestation determination if 10 or more days out
    - But team can consider “special circumstances”
- Should the student be referred for consideration of additional services?
  - More/different services?
- Is a threat assessment appropriate?
  - CANNOT exclude students solely to complete a threat assessment
  - And if so, who pays?

# Questions?