



Special Education Legal Training: Understanding Parent Rights

SONOMA COUNTY SELPA COMMUNITY ADVISORY COMMITTEE

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Topics To Be Covered

Key definitions

Essential rights under the laws governing students with disabilities

- *Note:* At age 18, all parental rights transfer to adult-student.

Focusing on participation (IEP meetings, referrals), consent, prior written notice, access to records, and dispute resolution (mediation, due process) for a Free Appropriate Public Education (FAPE),

Key topics include the right to informed consent for evaluations/services, receiving notice in native language, challenging decisions, requesting independent evaluations, and using avenues like alternative dispute resolution, mediation or due process hearings for disagreements.



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What is a Free Appropriate Public Education (FAPE?)

Under the federal Individuals with Disabilities Education Act (IDEA), states must ensure that FAPE is made available to all eligible children with disabilities between **ages of 3 and 21, inclusive**.

- Children who graduate from high school with a regular high school diploma are no longer eligible for FAPE.
- Preschool/TK children are entitled to FAPE beginning at age 3 regardless of whether they choose to attend TK at 4 years old.



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What is a Free Appropriate Public Education (FAPE?)

Every student with a disability eligible under IDEA is entitled to FAPE.

FAPE is defined as special education and related services that:

- a. Are provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the state educational agency;
- c. Include an appropriate preschool, elementary school, or secondary school education in the state involved; and
- d. Are provided in conformity with a legally compliant IEP.



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What is Special Education?

- Specially designed instruction,
- Provided at no cost to the parents,
- That is intended to meet the unique needs of a child with a disability.



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What is Specially Designed Instruction?

Adapting, as appropriate to the needs of an eligible child, the **content**, **methodology**, or **delivery** of instruction.

To address the child's unique needs resulting from the disability; and

Ensuring the child's access to the general curriculum so that the child can meet the educational standards that apply to all children within the jurisdiction of the public agency.

Note: Often called “specialized academic instruction” or SAI in IEPs.

34 CFR 300.39 (b)(3).



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What Are Related Services?

An array of supportive services provided to children with disabilities to assist them in benefiting from special education.

34 CFR 300.34 (a).



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What Are Related Services?

Related services under the IDEA include:

- Speech-language pathology and audiology services.
- Interpreting services.
- Psychological services.
- Physical and occupational therapy.
- Recreation, including therapeutic recreation.
- Early identification and assessment of disabilities in children.
- Counseling services, including rehabilitation counseling.
- Orientation and mobility services.
- Medical services for diagnostic or evaluation purposes.
- School health services and school nurse services.
- Social work services in schools.
- Parent counseling and training.

34 CFR 300.34 (a).

The list above is illustrative and is not exhaustive. Services not mentioned on the list may qualify as related services if they are necessary for a child to benefit from special education

What is the Legal Standard for Providing an Appropriate Education?

LEAs are not required to provide the “best” education or one designed to “maximize” a student’s potential.

Basic floor of opportunity

Courts ask two questions when determining if school districts offered/provided FAPE:

- 1. Were procedural safeguards followed?**
- 2. Was the IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances?**

Board of Hendrick Hudson v. Rowley, 458 U.S. 176 (1982), *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017).

What is the Least Restrictive Environment (LRE) Requirement?

Students with disabilities must be educated with nondisabled children to the maximum extent appropriate

Students with disabilities may only be removed to separate classes or schools when the nature or severity of their disabilities is such that they cannot receive an appropriate education in a general education classroom with supplementary aids and services.



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What is the Least Restrictive Environment (LRE) Requirement?

Presumption in favor of inclusion in the regular classroom by requiring that a student's IEP contain a justification and explanation of the extent, if any, to which a child will not participate with nondisabled peers in the general academic curriculum, extracurricular activities, and other nonacademic activities

LEAs must provide a continuum of placement and service alternatives.



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What is the Least Restrictive Environment (LRE) Requirement?

Sacramento City USD v. Rachel Holland 14 F.3d 1396 (9th Cir. 1994)

4 factors considered when analyzing whether an LEA's placement recommendation complies with LRE mandate

- Educational benefits to the student in a regular classroom, with appropriate aids and services
- Nonacademic benefits of interaction with children who are not disabled
- Effect on teacher and other students in the classroom of the presence of student (disruptive behavior and/or undue consumption of teacher's time)
- Cost of mainstreaming student compared to cost of placement in special education classroom



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Parents' Right to Participate

Parents have the right to refer their child for special education services and to participate in decisions concerning the development of their child's IEP.

Parents are required members of the IEP team.

- Schools may only convene an IEP team meeting without the parent if the school has documented reasonable attempts to convince the parent to attend.

IEP team meeting notice must be provided to parents early enough in advance to ensure that parents will have an opportunity to attend

IEP team meetings must occur at a mutually agreed on time and place



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Parents' Right to Participate

Parents' (and, whenever appropriate, the student's) input and wishes must be **considered** in the development of a student's IEP.

The school district is ultimately responsible for ensuring that a student is offered FAPE. If the IEP team cannot reach a consensus, the district must determine appropriate services and provide parents with prior written notice of the offer and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing.



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Parents' Right to Participate

Predetermination occurs when district members of the IEP team unilaterally decide a student's educational placement in advance of an IEP meeting.

“Take or leave” it approach



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Parents' Right to Receive Prior Written Notice

Parents have a right to receive prior written notice, in their native language, when the school district initiates or refuses their request to initiate a change in their child's identification, evaluation, or educational placement in special education or the provision of FAPE to the child.



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Parents' Right to Receive Prior Written Notice

Prior written notice must contain a comprehensive description of the action proposed (or refused) by the school district. The notice must include:

- 1 | a description of **the action** proposed or refused by the school;
- 2 | an explanation of **why** the school proposes or refuses to take the action;
- 3 | a description of each evaluation procedure, assessment, record, or report the school used as a **basis for their decision**;
- 4 | a statement that the parents of a child with a disability have **protection** under the procedural safeguards and, how the parents can obtain a copy of them;
- 5 | **sources for parents to contact to obtain assistance** in understanding these provisions;
- 6 | a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- 7 | a description of **other factors relevant** to the school's proposal or refusal. [34 C.F.R. §300.503(b)]



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Parents' Right to Consent (Or Not Consent)

Parents must provide informed, written consent before their child is assessed or provided with any special education services.

Parental consent must also be provided before any change in special education services may occur.

The district must ensure that parents understand proceedings of the IEP team meeting including arranging for an interpreter for parents with deafness or those whose native language is other than English.



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Parents' Right to Consent (Or Not Consent)

Parents may refuse to consent to an assessment or the initial placement of their child in special education.

Parents also have the right to revoke consent for their child to receive any special education or related services.



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Parents' Right to Request an Independent Educational Evaluation (IEE)

Parents always have the right to obtain an IEE at their own expense.

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the LEA.

34 CFR § 300.502(a)(1).



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Parents' Right to Request an Independent Educational Evaluation (IEE)

LEA may ask for the parent's reason why he or she objects to the LEA's evaluation. However, an explanation by the parent may not be required.

34 CFR § 300.502(b)(4).

A parent is entitled to only one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees.



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Parents' Right to Request an Independent Educational Evaluation (IEE)

If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either:

1. Initiate a due process hearing to show that its evaluation is appropriate; or
2. Grant the request for an IEE.

34 CFR § 300.502(a)(2).

The school district also has the right to establish the standards or criteria (including cost and location) for IEEs at public expense.



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Parents' Right to Access Educational Records

Parents have a right to inspect, review, and obtain copies of their child's educational records.

“Educational records” = any records that are

- Directly related to student; and
- Maintained by school district.

Parents must receive within **five (5) business days** of request.



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Parent's Right for Their Child to "Stay Put" During Pending of Any Proceeding Over Disagreement About Placement

If parents disagree with the school district regarding their child's special education placement or a proposed change in placement, the law requires the student to remain in the current program until the dispute is resolved.



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Parents' Right to Request a Hearing and/or Mediation Regarding Disagreements Over Their Child's Special Education Program

Parents have the right to file a request for due process or mediation about any matter relating to the identification, evaluation, or educational placement of a child, or provision of a free appropriate public education (FAPE) to a child through the Office of Administrative Hearings.

Parents have the right to have an attorney, an advocate, and the student, if appropriate, present at the due process hearing; and to make the hearing public.



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Parents' Right to Request a Hearing and/or Mediation Regarding Disagreements Over Their Child's Special Education Program

Statute of Limitations

2 years from date party knew or had reason to know of facts underlying request

Exception: If parent was prevented from requesting due process due to:

- Specific misrepresentations by LEA that it solved the problem
- LEA withheld information from parents that was required under special education laws



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What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) is an umbrella term referring to **any method of resolving disputes without litigation.**

Sonoma County SELPA ADR - <https://sonomaselpa.org/adr>



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Informal Alternative Dispute Resolution

Trained administrator

Offered by some LEAs and SELPAs

Could be virtual or in-person

Highly flexible way to resolve disagreements

More timely and less costly than mediation/hearing

Parties control the outcome

Opportunity to preserve relationships



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“Mediation Only” Through OAH

- Voluntary dispute resolution process where a neutral mediator from the state’s Office of Administrative Hearings assists the parent and the LEA in discussing and attempting to resolve a disagreement.
- No cost to either party to participate
- Mediators are selected by the state and know the laws relating to special education.
- Attorneys are not allowed to participate, generally.



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“Mediation Only” Through OAH

- It's a free service offered by the state of California.
- It's confidential – meaning that nothing that is said at mediation could be used against either party in a hearing.
- Held through Zoom on a mutually agreeable date.
- Usually held within 15 days of filing request
- OAH provides interpreter if necessary.
- If the “mediation only” process does not resolve the disagreement, either the school or parent may initiate a due process hearing to resolve the dispute.



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Resolution Sessions

LEA must convene within **15 days** of receiving parent's due process complaint

Purpose: Parent to discuss basis of complaint and give LEA opportunity to resolve it.

Parents, relevant members of IEP team who have specific knowledge of facts in due process complaint, representative with decision-making authority

LEA may not bring attorney unless parent brings attorney

Not automatically confidential under IDEA



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Parents' Right to File State Complaint

If parents believe their child's school district has violated the law, they may file a complaint with the California Department of Education.

The Department must investigate complaints alleging violations of noncompliance with IDEA, state special education laws, or regulations, and issue a written report of findings within 60 days of receiving the complaint.



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Three Reasons for Conflict in Special Education

1. Design

When parents and schools don't have access to the same information about the student and/or have a different understanding/ideas about student's strengths and needs.

2. Implementation

When parents perceive that plans for special education programs and services have not been adequately implemented.

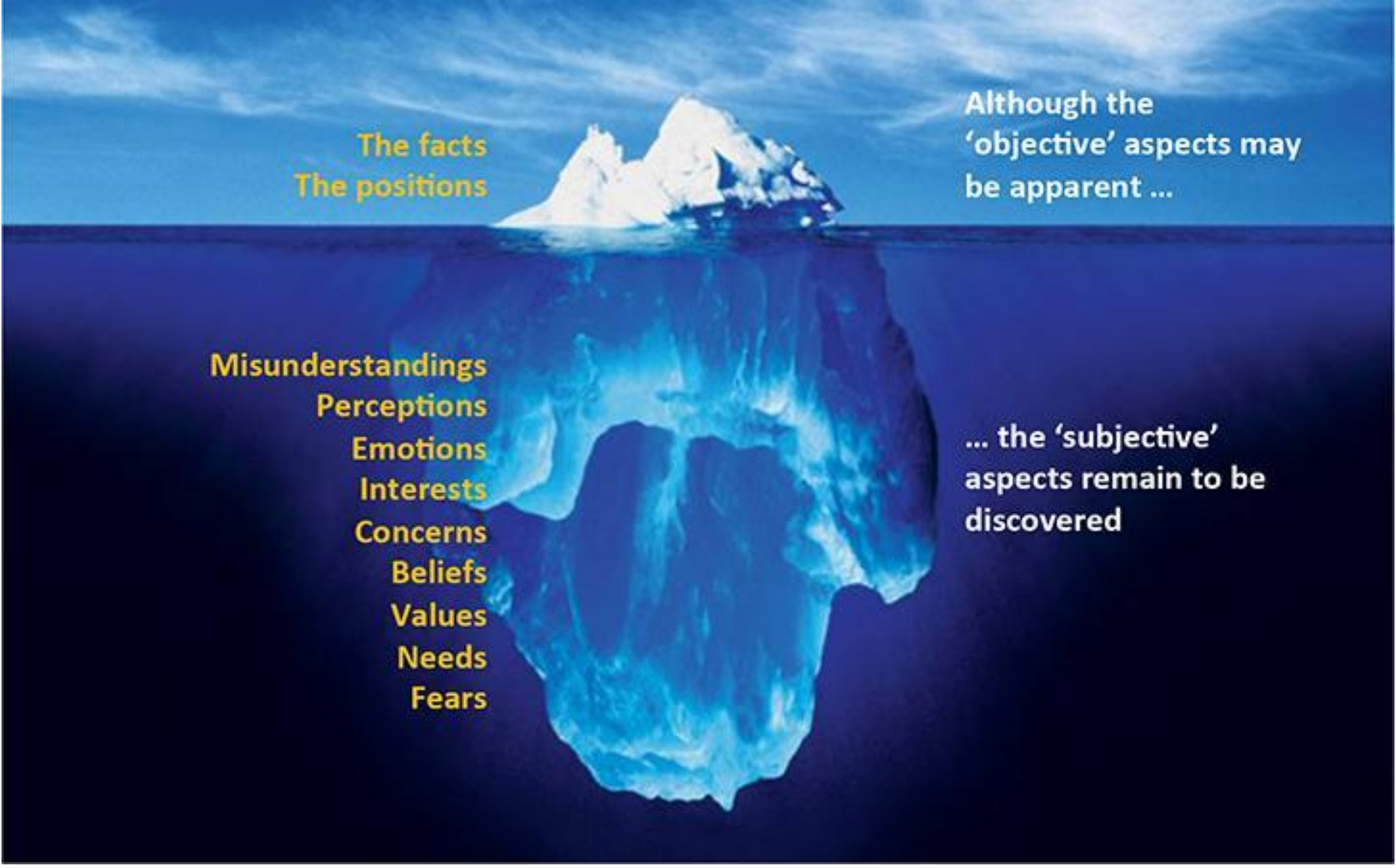
3. Relationship

Differing styles of interaction, breakdowns in communication, and/or loss of trust.

By the time lawsuit occurs, details of the dispute are less important than the animosity between the parties.



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**The facts
The positions**

Although the
'objective' aspects may
be apparent ...

**Misunderstandings
Perceptions
Emotions
Interests
Concerns
Beliefs
Values
Needs
Fears**

... the 'subjective'
aspects remain to be
discovered

Conflict Within the IEP Team

Conflict is a natural consequence of bringing together diverse perspectives.

A good IEP team should have differences of opinion so the likelihood of more creative solutions is increased.

Successful problem solving requires uncovering and articulating underlying interests to find solutions that integrate different perspectives.



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Tips for Collaborating with School Teams

Share concerns **factually and calmly**.

Focus on solutions, not blame.

Helpful phrasing: “I’m concerned about ____ and would like to work together on next steps.”

Review the IEP and progress data.

Bring notes, questions, and relevant documents.

Acknowledge what is working **and** what needs improvement.

Share your child’s strengths alongside concerns.



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Tips for Collaborating with School Teams

Be open to **trial strategies, data collection, or follow-up meetings.**

Raise concerns early.

Respond promptly to school outreach.

Ask questions and seek explanations in plain language.

Send a brief follow-up email summarizing agreements.

Progress takes time; services can be adjusted as needs change.



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THANK YOU!

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