

# AVOIDING LEGAL DISPUTES IN SPECIAL EDUCATION

*Lucky 21*



# No – No #1: Impeding Sufficient Parental Opportunity to Participate in the Decision-making Process

- Predetermination of placement
- Proper notice is not provided to parents of relevant information
- Staff meeting prior to IEP meeting, completing the IEP, and leaving the special education teacher to present the IEP.

## No – No #2: Making Recommendations/Decision based upon the Availability of Services

- Under IDEA, the availability of services is not a pertinent consideration
- Based upon each student's individual educational needs
- Avoid stating, “we always do it that way” or “we've never done that before”

## No – No #3: Making Recommendations/Decisions Based On Cost

- There is no dispute that provision of services can be costly
- Avoid stating, “I am sorry but that would just be too expensive” or “do you know how much that would cost if we did that for all of our students”

## No – No #4: Failing to Sufficiently Notify Parents of their Rights

- IDEA requires parental rights to be given during the following times: initial referral, annual review, parental request for evaluation, filing for a complaint for due process, and upon request by a parent
- Documentation of providing the parent rights is vital

## No – No #5: Making Recommendations/Decisions Based Upon Inadequate Evaluations

- Must be up-to-date, thorough and adequate to develop IEP
- Always consider the need to conduct or update evaluations in responding to parental requests
- “When there is debate, evaluate!”

## No – No #6: Responding Inappropriately to Requests For An Independent Educational Evaluation (IEE)

- Under IDEA, parents have the right to obtain an IEE at the school systems expense
- School system must either initiate a due process hearing to show that its evaluation is appropriate or pay for the IEE
- These request should be referred to the Director of Special Education

## No – No #7: Making Procedurally Improper Least Restrictive Environment (LRE) Determinations

- Clearly and specifically document the options considered on the continuum of alternative placements and why less restrictive options were rejected
- Consider placement in the regular education classroom first
- Do not move too quickly along the continuum



## No – No #8: Making Vague/Generalized Statements to Support a Recommendation for a More Restrictive Environment

- Vague statements may not be sufficient to support a recommendation for a more restrictive setting
- Avoid stating, “the self-contained classroom was chosen because the parent requested it” or “the special education classroom will be 'best' for the student”

## No – No #9: Being Overly Specific and Including Unnecessary Details or “Promises” in IEPs

- IEPs should not be so detailed as to substitute for a daily lesson plan
- Parents are not entitled to demand that items such as the specific teacher, the teacher's day-to-day schedule, curriculum, methodology or specific school site be included in the IEP
- These items are worthy of discussion and clarification during an IEP meeting, however none of these things are required to be written into the IEP

## No – No #10: Failing to Properly Address the Issue of Extended School Year Services (ESY)

- Annual consideration of ESY must be made for every SWD
- These services are necessary to the provision of FAPE
- May not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services
- Avoid stating, “our ESY program runs from June 16 until July 19 for everyone”

## No – No #11: Failing to Have Required School Staff at IEP Meetings in the Absence of following the Excusal Procedure

- Mandatory members: regular education teacher, special education teacher, and local education agency (LEA) representative
- LEA must be qualified to provide or supervise the provision of specially designed instruction and who is knowledgeable about the general curriculum and the availability of school agency resources
- Regular education teachers need to be adequately trained to fulfill their proper roles as member of an IEP team

## No – No #12: Failing to Allow for Participation of Persons Brought By Parents to IEP Meetings

- Entitled to bring “other individuals who have knowledge or special expertise regarding the child”
- IEP process is not a “voting” process, rather, it is a process by which the members of the team, including the parent, attempt to reach consensus as to the components of the student's IEP and program
- School system has the right to make appropriate arrangements for the meeting if parents bring someone (attorney/advocate)

## No – No #13: Setting Out or Offering Services without Sufficient Clarity

- Detailed enough for parents to have a clear understanding of the level of commitment of services
- Avoiding stating, “will receive OT on an 'as needed' basis” or “3 to 5 periods per day of special education services”

## No – No #14: Failing to Address Transition Activities and Providing the Summary of Performance

- Transition plan in place not later than when a student is 16<sup>th</sup> or before entering 9<sup>th</sup> grade
- Measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment and , where appropriate, independent living skills
- Summary of performance is required once a child's eligibility for FAPE has expired via graduation with a regular high school diploma or aging out of eligibility

# No – No #15: Refusing to “Consider” Independent Evaluative Information Brought in by the Parents

- Appropriate consideration must be given to IEE
  - Refer to ItsLearning – FCS Special Education – Policies, Procedures, Guidelines
- Evaluator's recommendations are not required to be incorporated into the IEP, however school staff should be prepared to show that “consideration” was given to the report and its results and recommendation
- Avoid stating, “we aren't going to even consider the report”



## No – No #16: Failing to Address Behavioral Strategies/Interventions as Part of the IEP

- IDEA requires that at any time a child exhibits behavior that impedes his or her learning or that of other, the IEP Team must consider strategies, supports, positive behavioral interventions to address the behavior
- BIP is for any student who has behavior that impedes learning, not just EBD

## No – No #17: Making Unilateral Changes in Placement Through the Use of Suspension or Other Removal from the Current Placement

- Suspensions for over 10 days at a time may constitute a “change in placement” for a SWD
- If a “change in placement” occurs through the use of disciplinary action, the following steps must take place: 1) manifestation determination 2) FBA used to develop BIP 3) IEP team must determine what services are to be provided to student for any removal in order to continue FAPE
- Avoid – sending home student for a “cool – off” period or “home time-out” or not allowing them to return to school without a psychiatric evaluation

## No – No #18: Diagnosing Medical Conditions/Suggesting Medication Without the Credentials for Doing So

- Proper referral for an evaluation must be made rather than a statement of what school personnel believe to be the child's disability or medical condition
- IDEA prohibits school systems from requiring a student to obtain a prescription for medications as a condition of attending school or providing services
- Avoid stating, “it's obvious that your child has ADHD, ODD and OCD. Take him to the doctor to be put on medication”

## No – No #19: Failing to Share all Relevant Evaluative Information with the Parents

- Failure to provide all relevant evaluative data to parents, could be considered a procedural violation sufficient to amount to a denial of FAPE
- Recommendation that evaluation reports be provided to parents prior to an IEP meeting
- All information, good and bad, must be fully shared with parent so they are meaningful participants in the IEP and educational decision-making process.

## No – No #20: Failing to Include Measurable Goals in the IEP

- If the IEP Team decides not to include short-term objectives in the IEP, there should be an alternative and clear what of defending that the annual goals are measurable.

## No – No #21: Failing to Develop a Plan for the Provision of Services in the IEP

- Failure to implement a student's IEP is the most serious substantive disaster that can occur
- Prepare an “action plan” for ensuring that services are provided in a timely and appropriate fashion
- Schools must ensure that each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of a child's IEP, is informed of his or her specific responsibilities for the implementation of the IEP.