

Legal Issues and Facilitative IEPs

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Dispute Resolution

Division for Special Education Services and Supports

November 2, 2016

Learning Targets



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- I can locate resources to assist parents in understanding their rights under IDEA.
- I can explain the facilitative IEP process.
- I can discuss the IDEA issues that are frequently raised in formal complaints.

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CADRE Continuum of Dispute Resolution Processes & Practices

Stages of Conflict	Stage I				Stage II			Stage III			Stage IV				Stage V			
Levels of Intervention	Prevention				Disagreement			Conflict			Procedural Safeguards				Legal Review			
Assistance/ Intervention Options	Parent Engagement	Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent to Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Meeting	Mediation under IDEA	Written State Complaints	Due Process Hearing	Hearing Appeal (Two-Tier Systems)	Litigation	Legislation
	Third-Party Assistance													Third-Party Intervention				
	Decision Making by Parties													Decision Making by Third-Party				
	Interest-Based													Rights-Based				
	Informal & Flexible													Formal & Fixed				

Dispute Prevention Resources

GaDOE Special Education Questions and Support Line for parents and districts



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- Answers question related to the special education and related services of a child
- Explains the procedural safeguards (parents' rights) available to parents of students with disabilities;
- Provides information about, access to, and assistance with the dispute resolution processes;
- Discusses options for addressing concerns or disagreements about a student's special education program; and
- Provides callers with other useful resources and informational materials

Contact Christopher
Horton
(404) 657-9968;
[SPEDhelpdesk@doe.k12
.ga.us](mailto:SPEDhelpdesk@doe.k12.ga.us)

What is available on the GaDOE website?



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- Overview Link
 - Dispute Resolution Comparison Chart
- Formal Complaints, Mediation, and Due Process Hearing Links
 - Forms and FAQs
- Due Process Hearing Decisions (FY 2001-2016)
- Dispute Resolution Parent Guides (Mediation, Written State Complaints, Due Process Complaints/Hearings, Resolution Meetings)
 - English and Spanish

What is available on the GaDOE website?



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- Parent Rights Link
 - Parent Rights Videos (7)
 - Parent Notice, Consent, Confidentiality
 - Evaluations and IEEs
 - LRE
 - Private School Placement
 - Discipline Procedures/Rights
 - Dispute Resolution
 - Surrogate Parent/Transfer of Rights
 - Condensed Parent Rights
 - Full Parent Rights
 - Arabic, Chinese, English, Japanese, Korean, Spanish, Vietnamese
 - Special Education Parent Supports and Legal Aid Providers

What is available on the GaDOE website?



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- **Parent Info Fact Sheets (18)**
 - Assistive Technology
 - Discipline
 - Due Process
 - Extended School Year Services
 - Evaluations
 - Formal Complaints
 - FBAs and BIPs
 - GAA
 - Helping your child with disabilities with homework
 - IEP
 - Mediation
 - Person-Centered Planning
 - Preparing your child with disabilities for kindergarten
 - Reevaluations and IEEs
 - Transition from Early Intervention to Public School
 - Transition to Life after High School
 - Understanding state and local testing
 - Understanding statewide testing accommodations

What is IEP Facilitation?



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- IEP Facilitation is a “**collaborative dispute prevention** and resolution process used when members of an IEP Team agree that the presence of a third party would help **facilitate communication and problem solving.**”
- IEP Facilitation can be especially useful when there is a **history of difficult interactions** or a meeting is expected to be particularly **complex or controversial.**

What is IEP Facilitation?



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- IEP Facilitation is an **optional** process, not required by the Individuals with Disabilities Education Act (IDEA)
- A Facilitated IEP (FIEP) Team meeting is the **same as any other IEP Team meeting**, except that a facilitator joins the meeting

What is the role of the facilitator?



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- Helps IEP Team members develop **ground rules**, an **agenda**, and **expected outcomes** for the meeting
- **Guides discussions** by asking student-focused questions
- Keeps the IEP Team **on task** and the meeting **on schedule**

What is the role of the facilitator?



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- Asks questions to **clarify points** of agreement and disagreement and helps identify **workable solutions**
- **Does NOT** make decisions or determine if team members are right or wrong
- **Does NOT** address issues unrelated to the IEP and does NOT draft the IEP

What are some benefits of using IEP Facilitation?



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- May **build and improve relationships** among IEP Team members
- Team members may **feel better heard** when a facilitator is involved
- Allows all members of the IEP Team the chance to **participate fully**

What are some benefits of using IEP Facilitation?



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- The IEP Team may work together more effectively and efficiently to create an IEP that **benefits the student** and is **supported by all IEP Team members**
- Keeps **decision-making with the IEP Team members** who know the student best
- Helps resolve disagreements **more quickly** than other dispute resolution processes (and is **less costly** – free to parents and districts)

FIEP Team Meeting Project



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- Began in March 2016 in 4 pilot districts (Bartow, Fulton, Greene, and Union)
- In FY 2016, 7 requests and 5 FIEP Team meetings held
- In FY 2017, we added 2 more districts (Turner and White)
- In FY 2017 to date, we had 5 requests and 4 FIEP Team meetings
- Provided 2 facilitators (lead and support) at each FIEP Team meeting

Dispute Resolution Processes

Legally-Mandated Dispute Resolution Processes under the IDEA

- Mediation (34 C.F.R. § 300.506)
- Formal Written Complaints
(34 C.F.R. §§ 300.151-300.153)
- Due Process Hearing Requests
(34 C.F.R. §§ 300.507-300.518)
 - Resolution Sessions (34 C.F.R.
§ 300.510)

Code of Federal
Regulations
<http://www.ecfr.gov/>
Title 34 Subtitle B
Part 300

Due Process Hearings

FY 15 Due Process Cases



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- 15-300428
 - Court found that the district violated IDEA's procedural safeguards by failing to discuss the parent's concerns regarding the change in location for the student's VI services
 - Court noted that the district failed to consider in the IEP Team meeting:
 - The extent to which the location may be potentially harmful or impact the student's services and may not be the student's LRE;
 - The full continuum of alternative placements (e.g. instruction from an itinerant VI teacher as opposed to a on-site VI teacher);
 - The effects of the change from regular education to special education transportation
 - The possible effect that a longer bus ride would have on the student's receipt of O&M services and study skills instruction

FY 15 Due Process Cases

- 15-300428 cont'd
 - Court noted that a change in location alone, in most instances, will not amount to a change in placement, but if there is a “fundamental change in, or elimination of, a basic element of the educational program, then a change in location can amount to a change in placement.”
 - Court denied the parent’s substantive FAPE and LRE claims

FY 15 Due Process Cases



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- 15-312359
 - Court found that the district deprived the student of a FAPE for 2 ½ years by:
 - Relying on the results of invalid district FBAs to create a BIP that did not meet the needs of the student
 - Failing to address the student's interfering behaviors in a timely manner
 - Failing to conduct an AT evaluation and provide an appropriate AT device in a timely manner

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FY 15 Due Process Cases



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- 15-312359 cont'd
 - Court found that the student's IEPs were not reasonably calculated to confer educational benefit because:
 - The IEPs included a small number of objectives which were chosen with little consideration for student's functional needs
 - Teachers collected inadequate data and provided limited instruction related to student's IEP objectives
 - The district ignored the repeated recommendations of behavior experts
 - The district failed to offer the student simple supports commonly found in classrooms of students with autism

FY 15 Due Process Cases



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- 15-312359 cont'd (Remedy)
 - Reimbursement for private services related to behavior management
 - Development, implementation, and supervision of student's educational program by private behavior therapy group for 18 months
 - Monitoring of student's educational program by private behavior therapist for additional 1 ½ years
 - Parent training from private group for nearly 2 years
 - Home based services from private group for 20 months

FY16 Due Process Case

- 16-32583
 - Court found that the parent was not entitled to an IEE at public expense because the parent did not disagree with the district's evaluation but instead disagreed with the IEP Team decision to reduce the student's speech services from 90 minutes per week to 60 minutes per week.
 - Parent requested out of state evaluation including airfare, hotel, and rental car based on his allegation that the potential evaluators were "inappropriately tied to the school district."

Formal State Complaints

FY 2015 Findings of Non-Compliance in Formal Complaints (40 Findings against 18 districts)



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- **Implementation of the IEP (11)**
- **Development, review, and revision of the IEP (7)**
- **Evaluations and Reevaluations (7)**
- IEP Team (2)
- **Parent Participation (2)**
- Independent Educational Evaluation (2)
- Discipline Procedures (2)
- Procedural Safeguards Notice (1)
- Definition of IEP (1)
- Amendment of records at parent request (1)
- Prior notice by public agency (1)
- Placements (1)
- Least Restrictive Environment (1)
- Highly Qualified Special Education Teachers (1)

FY 2016 YTD Findings of Non-Compliance in Formal Complaints (66 Findings against 23 districts)



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- **Implementation of the IEP (18)**
- **Development, review, and revision of the IEP (11)**
- **Parent Participation (6)**
- Free, Appropriate Public Education (6)
- **Evaluations and Reevaluations (4)**
- Confidentiality (3)
- When IEPs must be in effect (3)
- Child Find (2)
- Prior notice by public agency (2)
- Placements (2)
- Least Restrictive Environment Requirements (2)
- Discipline Procedures (2)
- Access Rights (2)
- Independent Educational Evaluation (1)
- Highly Qualified (1)
- Parental Consent (1)

Implementation of IEP (34 C.F.R. § 300.320)



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- This regulation defines an IEP and details the required components of an IEP.
- "Each public agency must ensure that, as soon as possible following development of the IEP, special education and related services are made available to the child **in accordance with the child's IEP.**" 34 C.F.R. § 300.323(c)(2)
- When dealing with transfer IEPs, the new district must "provide FAPE to the child (including services **comparable** to those described in the child's IEP from previous public agency)" until new district either adopts the IEP or develops, adopts and implements new IEP." 34 C.F.R. § 300.323(e)

Implementation of IEP (34 C.F.R. § 300.320)



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- Students not receiving the special education and related services required in the IEP
 - Incorrect service model (e.g., co-taught instead of resource)
 - Absence of certified personnel (e.g., teacher vacancies and teacher absences)
 - Inadequate special education services (e.g., over 10 days in ISS)

Implementation of IEP (34 C.F.R. § 300.320)



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- Lack of documentation that the student is receiving the supplementary aids and services required in the IEP
- Parents not receiving progress reports as required in the IEP
 - "Periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards)" 34 C.F.R. § 300.320(a)(3)(ii).
- **Warning:** Be careful of possible confidentiality violations.

What do you need to think about....



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- Procedures for checking IEP service pages before start of school year (especially the transition years from elementary to middle and middle to high)
- Procedures when special education teachers and related service providers are absent and when there is a vacancy
- Providing special education and related services while students are serving ISS
- How to document services and accommodations
- Collecting sufficient progress monitoring data
- Providing timely progress reports
- Procedures for transfer students with IEPs

Development, Review, Revision of IEP (34 C.F.R. § 300.324)



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- This regulation details, among other things, the factors that must be considered when developing an IEP, when an IEP can be amended without an IEP Team meeting, the annual review requirement, and when an IEP must be revised.
- 34 C.F.R. § 300.324(b)(1)(ii) says that each **public agency must ensure** that the IEP Team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general curriculum, results of any reevaluation, information about the child provided to or by the parents, the child's anticipated needs, and other matters.

Development, Review, Revision of IEP (34 C.F.R. § 300.324)



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- District went a whole semester without holding an IEP Team meeting after the student was failing 2 academic classes
- District failed to ensure an IEP Team meeting was held when for nearly 6 months the student was not accessing his 10 hours a week of ABA therapy as required in his IEP
- District failed to discuss and consider private evaluation until the parent requested a meeting
- **Warning:** Make sure that you have all of the required members at IEP Team meetings.

Development, Review, Revision of IEP (34 C.F.R. § 300.324)



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- “[I]n the case of a student whose behavior impedes the student’s learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior.” 34 C.F.R. § 300.324(b)(2)(i).
- District failed to review and revise the student’s BIP even after the district “located” the BIP and student’s behavior continue to worsen
- District refused to discuss the contents of the student’s BIP in his IEP Team meeting and stated that they did not plan to include the BIP as part of the student’s IEP
- **Warning:** Be careful of blanket refusals to discuss or consider certain items in an IEP Team meeting

Development, Review, Revision of IEP (34 C.F.R. § 300.324)



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- Additionally, in the case of a student who is blind or visually impaired, the IEP Team must provide for instruction in Braille and the use of Braille unless the Team determines, **after an evaluation of the child's reading and writing skills, needs and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille)**, that instruction in Braille or the use of Braille is not appropriate for the child.
34 C.F.R. § 300.324(a)(2)(iii).
- The district failed to consider a doctor's report which indicated that (1) the student's vision is unlikely to improve, (2) there is a strong possibility that it will get worse, and (3) Braille instruction should be provided.

Development, Review, Revision of IEP (34 C.F.R. § 300.324)



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- When making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent and district may agree not to convene a meeting and may develop a written document to amend or modify the current IEP. 34 C.F.R. § 300.324(a)(4), (6).
- The district changed the student's placement without an IEP Team meeting or written document
- The IEP Team agreed to 1-to-1 assistance but did not document in IEP for a certain period of time. District said the assistance was provided on a "trial" basis.
- Student's teachers made a determination about ESY services without holding an IEP Team meeting and without parent involvement

What do you need to think about. . .



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- Not waiting for the parent to ask for an IEP Team meeting (the burden is on the public agency)
- Making sure the IEP Team considers all relevant information during IEP Team meetings
- Procedures for amending an IEP without convening an IEP Team meeting
- Ensuring timely annual review IEP Team meetings (start scheduling early!!!)

Evaluations and Reevaluations (34 C.F.R. §§ 300.301-300.306)

- These regulations address initial evaluations (request, timelines, procedures), reevaluations, and eligibility.
- For additional information on timelines, refer to State Board of Education Rule 160-4-7-.04(1), which provides exceptions for holiday periods, summer vacations, and when consent is received with less than 30 days remaining in the school year.

Evaluations and Reevaluations (34 C.F.R. §§ 300.301-300.306)

- Initial evaluation and eligibility meeting not held within 60 days of parent consent; student was evaluated before passing her vision screening, which she ultimately failed
- Parent made written request for evaluation in March, district held RTI meeting, and did not give consent form until May
- Parent stated "student should be in special education"; district explained the special education process and said that medical documentation was needed; parent never provided with consent form
- **Warning:** Don't forget to provide the parent a procedural safeguards notice (also called Parent Rights) upon parent request for evaluation. (See 34 C.F.R. § 300.504(a)(1)).

OSEP 11-07, Response to Intervention (RTI) Memo, January 21, 2011



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- “The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 C.F.R. §§ 300.304-300.311, to a child suspected of having a disability under 34 C.F.R. § 300.8. If the [local educational agency (LEA)] **agrees** with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the **LEA must evaluate the child** ... If, however, the LEA **does not suspect that the child has a disability, and denies the request** for an initial evaluation, the LEA **must provide written notice** to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision.” (emphasis added)

OSEP 11-07, Response to Intervention (RTI) Memo, January 21, 2011

- “Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department’s longstanding policy that the LEA must seek parental consent within a **reasonable period of time** after the referral for evaluation, if the LEA agrees that an initial evaluation is needed.” (emphasis added).
- Also, the IDEA states that “[t]he public agency must **promptly** request parental consent to evaluate the child to determine if the child needs special education and related services. . .” 34 C.F.R. § 300.309(c) (emphasis added).

Update – OSEP 16-07, April 29, 2016

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/oseprt preschoolmemo4-29-16.pdf>



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- “The IDEA child find requirements permit referrals from any source, including private and public preschools (e.g., Head Start) and community-based child care programs (hereinafter "preschool programs"), that suspects a child may be eligible for special education and related services.”
- “It is critical that this **identification occurs in a timely manner** and that **no procedures or practices result in delaying or denying this identification**. States and LEAs have an obligation to ensure that evaluations of all children suspected of having a disability, including evaluation of **3-, 4-, or 5-year-old children enrolled in preschool programs**, are not delayed or denied because of implementation of an RTI strategy.”

What do you need to think about . . .



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- Procedures when a parent requests a special education evaluation
- Disseminating those procedures to all staff, including those participating in SST/RTI and Section 504 meetings
- If denying the request, providing a sufficient prior written notice (*See 34 C.F.R. § 300.503*)

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Parent Participation (34 C.F.R. § 300.322)

- This regulation address notification to the parents about IEP Team meetings, the contents of the notice, the methods for ensuring parent participation, when an IEP Team meeting can be conducted without a parent in attendance, and the requirement to provide the parent a copy of the IEP.
- 34 C.F.R. § 300.322(d) says "A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend."

Parent Participation (34 C.F.R. § 300.322)

- Parent did not receive a copy of the IEP until over 40 days after the IEP Team meeting when she filed a state complaint
- Parent did not receive a copy of the IEP until over 40 days after the IEP Team meeting when she met with the principal
- Parent did not receive a copy of the IEP until over a month after the annual review meeting

Parent Participation (34 C.F.R. § 300.322)

- In a recent decision, the Eleventh Circuit Court of Appeals stated that "...Parental '[p]articipation must be more than a mere form; it must be meaningful.' [] It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." [R.L. v. Miami-Dade County School Board, 757 F.3d 1173, 63 IDELR 182 \(11th Cir. 2014\).](#)
- District failed to consider parent's concerns with data that was used to justify a change in placement
- District failed to discuss or consider all of the parent's concerns related to the student's IEP

What do you need to think about. . .



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- Procedures for notifying parents of IEP Team meetings “early enough to ensure that they will have an opportunity to attend” and “scheduling the meeting at a mutually agreed on time and place.”
- Documentation of the notifications sent and records of attempts to arrange a mutually agreed on time and place (multiple modes)
- Providing finalized IEP to parents in timely manner
- Ensuring that IEP Teams “address” all parent concerns related to the IEP

Child Find (34 C.F.R. § 300.111)

- This regulation requires LEA to **identify, locate, and evaluate** children who are **suspected of** being a child with a disability and in need of special education.
- Student with diagnosis of ADHD, previously retained, struggled in reading, and made minimal progress through RTI, Early Intervention Program, and 504 plan
- Student's last placement was in residential program for self-harm; parent reported diagnosis of depression, PTSD, anxiety, and bipolar; failing 3 classes but historically A/B student; excessive absences

Other IDEA violations

- Prior Notice by public agency (34 C.F.R. § 300.503)
 - District failed to provide prior written notice of its refusal to conduct an AT evaluation and instead did an AT assessment
- Access Rights (34 C.F.R. 300.613)
 - District failed to provide parent with copies of lesson plans and incident reports within 45 days of request
 - Behavior data sheets specifically requested by parent were not provided

Other IDEA violations

- Independent Educational Evaluation (34 C.F.R. § 300.502)
 - District failed to grant IEE or file due process when parent disagreed with the student's reevaluation which the district argued was not a "evaluation".
- When IEPs must be in effect (34 C.F.R. § 300.323)
 - District waited 2 weeks before providing the student's new teacher with the student's required testing accommodation of small group setting.
 - Student's BIP was not provided to alternative school staff for 18 days
 - Student reenrolled in district after homeschooling; district waited 65 days after enrollment to hold IEP Team meeting and no IEP or special education services in place before then

Other IDEA violations

- Discipline Procedures (34 C.F.R. §§ 300.530-300.536)
 - MDRs not conducted correctly when the Team included the student's behavior incidents that occurred when the student's BIP was "lost" and not being implemented; Team could not properly determine if conduct was for failure to implement the IEP; In previous MDR, Team failed to update the BIP after the student's conduct was found to be a manifestation of his disability; In last MDR, the above errors resulted in the student being expelled
 - Student at the alternative school did not have a MDR meeting before placement

Other IDEA violations

- Least Restrictive Environment Requirements (34 C.F.R. §§ 300.114-300.117)
 - Student not allowed to attend field trip without parent based on administrators' decision
 - IEP Team failed to consider student's progress in his general education advanced math class and two co-taught classes before changing placement to all special education setting
- Parental Consent (34 C.F.R. § 300.300)
 - District gave the student a test without parent consent to determine if full psychological testing was needed; called it "informal educational screening"

**Dear Colleague Letter, 61 IDELR 263,
OSERS, Office of Special Education
Programs, August 20, 2013,**

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf>



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- States that “bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a [FAPE] under the IDEA that must be remedied.”
- States that “**[w]hether or not the bullying is related to the student’s disability**, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied.”

**Dear Colleague Letter, 61 IDELR 263,
OSERS, Office of Special Education
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- Additionally, the letter indicates the following: “[s]chools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his or her IEP. **The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student’s needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student’s individual needs; and revise the IEP accordingly.**”

Guidance on Dyslexia

- [OSERS Dear Colleague Letter \(October 23, 2015\)](#)
 - Policy guidance to clarify that there is nothing in the IDEA that would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in IDEA evaluations, eligibility determinations, or IEP documents. Also, encourages SEAs and LEAs to consider situations when it would be appropriate to use the terms and to remind them of the importance of addressing the unique educational needs of children with SLDs resulting from dyslexia, dyscalculia, and dysgraphia.
- [OSEP Letter to Unnerstall \(April 25, 2016\)](#)
 - States that a district must conduct an assessment for dyslexia under the IDEA only when such an assessment is necessary to determine whether the student has a disability and needs special education and related services, and to identify the IEP services the student needs as a result of his disability.

Can you hit the “bullseye”?



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- Can you locate resources to assist parents in understanding their rights under IDEA?
- Can you explain the facilitative IEP process?
- Can you discuss the IDEA issues that are frequently raised in formal complaints?

Any Questions???



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