

GCASE SELDA Presentation

NOVEMBER 15, 2017

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Evaluation, Eligibility and IEP Development and Implementation

SPECIAL EDUCATION LEGAL ISSUES AND HOW TO
HANDLE THE IEP PROCESS LIKE A SUPER HERO

You're much stronger than you think
you are.
Trust me.

- SUPERMAN



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Initial Evaluation

- Each LEA must conduct a full and individual initial evaluation before the initial provision of special education and related services
- Either a parent of a child or the school district may initiate a request for an initial evaluation to determine if a child is a child with a disability
- Initial evaluations must be completed within 60 calendar days of receiving parental consent for evaluation
- Remember holiday periods and other circumstances when children are not in attendance for five consecutive school days shall not be counted toward the 60 calendar day timeline, including the weekend days before and after such holiday periods

What do the Courts say?

- Parent need not have an in-depth understanding of all of the services a child's IEP might provide, or every aspect of a proposed evaluation. Rather, for consent to be "informed," the parent must merely have a general understanding of the activity for which he or she is providing consent. *Letter to Johnson, 56 IDELR 51* (OSEP 2010).
- The 11th Circuit has recognized that School Districts are merely required to describe the purposes and parameters of the evaluations/re-evaluations and provide examples of the testing instruments they contemplate using. Parents are not entitled to condition consent on such things as "who is to conduct the interview, the presence of the parents during the evaluation, not permitting the evaluation to be used in litigation And whether the parents received the information prior to the school district." *G.J. v. Muscogee County Sch. Dist.*, 668 F.3d 1258, 1264 (11th Cir. 2012)

What do superheroes do?

- Consent: The District must obtain informed consent from the parents of a child before the evaluation is conducted
- What does “reasonable efforts” mean? Document these attempts : keep detailed records of calls, attempted calls, copies of correspondence exchanged, documentation of visits to parent’s home or workplace

What do superheroes do?

- If the parent refuses to consent or fails to respond, the LEA **may, but is not required to**, pursue the initial evaluation of the child utilizing mediation or due process hearing procedures for consent override
- If a student is a ward of the state and not residing with a parent, the LEA is not required to obtain informed consent if, despite reasonable efforts, they cannot discover the parent's whereabouts, the parent's rights or rights to make educational decisions about the child have been terminated

Evaluation Procedures

- Provide notice (prior written notice as defined by 34 C.F.R. § 300.503)
- Use a variety of assessment tools and strategies that may assist in determining:
 - Whether the student has a disability as defined by IDEA
 - The content of the child's IEP
- Do not use any single procedure as the sole criterion
- Use technically sound instruments

...more on evaluation procedures...

- Additional procedures exist for ensuring tests are not discriminatory, provided in a child's native language/communication, used for the purposes created, are valid and reliable, are administered in accordance with instructions, tailored to assess specific areas of educational need and administered by trained and knowledgeable personnel
- Ensure that the evaluation is... "sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category..."

What do superheroes do?

- Make sure your evaluations are defensible.
- Assess your evaluators' skills and know how to maximize their strengths and backgrounds – just because an evaluator is “assigned” to a school does not mean that evaluator must conduct that evaluation
- Observation-only evaluations may be problematic (OT, PT, etc.)
- Plan evaluations as though you are going to due process – is this an evaluator you are prepared to put on the stand? Are you conducting sufficiently thorough testing?

Independent Educational Evaluations (IEEs)

34 C.F.R. § 300.502; SBOE Rule 160-4-7-.09(4)(IDDF(9)(4));

- An IEE is an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the child's education provided at no cost to the parents;
- Must be part of procedural safeguards (parents' rights);
- Once a parent requests an IEE : the LEA must **without unnecessary delay** either 1) initiate a due process hearing defending its evaluation; or 2) ensure that an IEE is provided at public expense.

What do superheroes know?

- Do not confuse an outside evaluation that your District conducts by an evaluator of its own choosing with an Independent Educational Evaluation.
- The standard for defending your District's evaluation is not that high, but the cost for a due process hearing could be high nonetheless. A District is entitled to evaluate a student by an evaluator of its choice and to do so before a parent is entitled to an IEE
 - See *M.T.V. v. Dekalb Co. Sch. Dist.*, 446 F.3d 1153 (11th Cir. 2006).
- What “without unnecessary delay” means has varied in the courts from a matter of weeks to a few months – but err on the side of caution. While the timeline is somewhat unclear, but generally, a District may evaluate first if its last evaluation is over a year old and definitely if it is more than three years old or if the District has not evaluated in the specific area yet
- After the District evaluates, the parents would still be entitled to request an IEE if he or she disagrees with the evaluation

What do superheroes know?

- A parent has a right to an IEE if he or she “disagrees” with an evaluation conducted/obtained by an LEA
- A parent is only entitled to **one** IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees

What do superheroes do?

- A parent must actually disagree with the evaluation.
- This means:
 - The District must have an opportunity to conduct its own evaluation first;
 - The parent must express disagreement (although not necessarily the reasons for the disagreement);
- The parent only gets one evaluation – but probably this is for each evaluation the District conducts (psychological, OT, PT, etc.)
- Although probably not for each discrete area within that – one for pragmatic language and one for receptive language.

- If the LEA is going to grant the IEE, it must provide parents upon request, information about where an IEE may be obtained and the LEA's applicable criteria for the IEE
 - The information shall include criteria regarding location of the evaluations and qualifications of the examiner;
 - Criteria must be the same as the criteria that the state or LEA uses when it initiates an evaluation;
 - An LEA may not impose other conditions or timelines.

Then what???

- If the LEA requested due process and the administrative court finds the LEA's evaluation appropriate, the parent is still entitled an independent evaluation, but not at public expense
- Either way, the evaluation shall be considered by the LEA, if it meets LEA and state criteria
- May be presented in a due process hearing

Reevaluation

- Each LEA must ensure that a reevaluation of each child with a disability is conducted not more than once a year, unless parent and LEA agree otherwise; and at least once every 3 years, unless the parent and the LEA agree that a reevaluation is unnecessary. SBOE Rule 160-4-7-.04-2(IDDF(04)).
- Should be conducted if student warrants reevaluation based on the student's educational or related service performance or if the student's teacher or parent requests one.
- A reevaluation must be conducted before determining that the child is no longer a child with a disability.

Always Consider

- Existing data including:
 - Evaluations and information provided by parents;
 - Current classroom-based, local, or state assessments;
 - Classroom observations ; and
 - Observations by teachers, related service providers.
- What additional data, if any, needs to be collected.

What do superheroes do?

- Communicate with parents the benefits of a reevaluation
- Determine whether a full or partial reevaluation is needed and document decision surrounding same
- A comprehensive history of the child is important – reevaluation is not just for eligibility purposes
- When you encounter problem cases – one question to ask is, “When was this student last reevaluated?”

Eligibility

- A child or youth from 3 through 21 years of age is considered to have a disability under IDEA if the child or youth meets the eligibility criteria and needs special education and related services.

What do superheroes do?

- The most difficult discussions often hinge not on whether the student has a disability, but on whether it rises to the level of the student requiring special education and related services
- If you are debating a 504 plan (or other plan) v. an IEP sometimes it is useful to break it back down –
 - Ask the parent what services he/she believe the student needs
 - Look at the plan in which the services can be provided; and
 - Determine whether it is the student's LRE

What do superheroes know?

- When is it worth fighting about eligibility?
- Eligibility is an entry way into special education - the IEP should be based on the student's individual needs, not on the student's eligibility category
- But...eligibility categories do also provide that "snapshot" of a student such that if a teacher picks up a student's IEP there is an initial notion of the student's needs. Maybe this is why eligibility can be such a sensitive topic...

Eligibility – What do the Courts say?

- A district should consider the services a student is already receiving in determining whether he requires special education. Evidence that a student with an impairment has made non-trivial educational progress after receiving general education interventions is a strong indicator that he does not require IDEA services. *See, e.g., M.P. v. Arkansas Pass Indep. Sch. Dist.*, 67 IDELR 58 (S.D. Tex. 2016). However, the eligibility team must distinguish between general education interventions and specialized instruction.
- Although the student in *L.J. v. Pittsburg Unified School District*, 116 LRP 37786 (9th Cir. 09/01/16), attended a general education fourth-grade class, he had the benefit of specially designed mental health services, a one-to-one behavioral aide, and accommodations that were not provided to his classmates. The district's classification of those services as general education interventions available to all students did not support its argument that the student had no need for special education services.

Consent for Initial Placement

- Consent for an initial evaluation should not be construed as consent for initial placement.
- Must obtain informed consent in order to place a student and the LEA may not use due process procedures to override this consent.
- If a parent refuses to consent to initial placement the LEA will not be considered in violation of the requirement to make FAPE available.
- If a parent gives consent, he/she may later revoke that consent and should be provided with notice at that time.

34 C.F.R. § 300.300(b)

Legal Resources for Georgia Administrators - Students – Example of Prior Written Notice, Revocation of Consent

IEP Team Meetings and IEP Development



Notice to Parents and Participants

- The invitation/notice to the IEP Team meeting shall indicate the purpose, time, and location of the meeting, participants who will be in attendance, and inform the parents of their right to invite other individuals who, in their opinion, have knowledge or special expertise regarding their child, including related services personnel
- It shall be sent early enough to ensure that the parent/guardian has an opportunity to attend the meeting
- The meeting shall be set at a mutually agreed upon time and place

What do superheroes know?

- Notice of meeting does not have to provide specific names of participants
- Many Districts have an internal procedure (written or unwritten) to send notices 10 days before the meeting, but the law does not require that
- If you plan on implementing a time limit, the notice is the best place to have that information

IEP Team must include the following participants:

- 1) Parents of the child
- 2) A general education teacher of the child, if the child is or may be participating in the regular education environment
- 3) One special education teacher of the child
- 4) A representative of the LEA, with the required knowledge
- 5) An individual who can interpret the instructional implications of evaluation results
- 6) At the discretion of the parent and LEA, other individuals who have knowledge or special expertise regarding the child
- 7) Whenever appropriate, the child with the disability

What do superheroes know?

- The DOE is quite stringent about the requirement for a general education teacher to be involved – *even* if the possibility of participating in the regular education environment seems remote.
- Your general education teacher needs to understand why they are participating in the meeting.
- You must obtain an excusal, in writing, for all required team members – it is best to do this *before* the meeting.

Preparation



Steps to a Successful Meeting

- Preparation, preparation, preparation
- Are all evaluations and tests completed, and results available to the placement committee?
- Did the committee review reports before the meeting?
- If parents have obtained any independent evaluations, has the school system received copies of these and made them available to members of the committee?
- Organize the file and all documents needed, and know the content of the file, the teacher's file, records, data, student work and the communication between the parent and district.
- Unfamiliarity creates an impression of indifference or incompetence!

The Necessary Elements of the IEP

Presentation of Rights

- Must be given to parents only once per school year, except that a copy shall also be given in the following circumstances:
 1. Upon initial referral or parent request for evaluation
 2. Upon receipt of the first state complaint or first due process hearing request in a school year
 3. Upon notification to the parent of the decision to “remove the child from his or her current placement and the removal constitutes a change of placement under the discipline provisions”
 4. Upon request by the parent

SBOE Rule 160-4-7-.09(1)(a)(IDDF(09))

Legal Resources for Georgia Administrators – Students – Legally Defensible IEP Checklist

Present Levels of Academic Achievement and Functional Performance

- Should contain at least the following:
 - The strengths of the child
 - The results of the initial or most recent evaluation of the child
 - The results, as appropriate, of the child's State or District wide assessments
 - The academic, developmental, and functional needs of the child

What do superheroes do?

- Make sure the appropriate information goes in the appropriate sections.
- Do not just include testing but make sure it provides an accurate depiction of the student...at the same time, do not oversimplify it – you should be able to get a good idea of the student's needs and use this as the foundation for your entire IEP.
- Make sure it describes the student today – not 5 years ago...avoid cutting and pasting year after year.
- Just because a parent requests evaluation information from the last 10 years does not mean you need to include it – you can reference evaluations, but then provide more detailed information about recent evaluation data

Special Factors

- The IEP team must consider the following:
 - The child's behavior and whether it is interfering in the student's learning or that of others, consider positive behavioral interventions and supports and other strategies to address behavior in the IEP or BIP
 - The student's limited English proficiency
 - The need for instruction or use of Braille if the student is blind or visually impaired
 - The communication needs of the student
 - The student's needs for assistive technology devices and services

Addressing Student Behavior



What do superheroes do?

- Know when to develop a BIP– if the student’s present levels are riddled with discussions of behavior, if teachers are constantly discussing behavior, if the student has a lengthy discipline log, if it is interfering with progress – you might need a behavior plan...Make FBAs your new best friend if they are not already.
- Consider including ESOL staff in the meeting if a special ed student receives ESOL services.

Development of a BIP – What do the Courts say

- According to the IHO's May 2015 decision, the teachers seemed unaware of the connection between the student's conduct and her difficulties with figurative language and changes in routines. "[The BIP] did not inform [the student's] teachers how to handle [the student's] behaviors, which was apparent to the [IHO] from responses given by the teachers 'that they did not understand the noncompliance,'" the judge wrote. Judge Holmes noted that the IHO had evaluated the BIP under the "more than trivial benefit" standard of FAPE -- a standard that had been superseded by the U.S. Supreme Court's ruling in *Endrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017). Given that the BIP failed to meet the lesser standard, the judge explained *Endrew F.* did not alter the outcome of the case.

***Paris School District v. A.H., by and through her parent*, 69 IDELR 243 117 LRP 12828 (2017)**

Continued...

- A district must have a fundamental understanding of a student's disability in order to develop a BIP that effectively addresses her problem behaviors. If a district does not understand why a student engages in certain behaviors, it cannot offer service providers effective strategies to address them. Although a BIP from the student's previous LEA identified her problem behaviors as verbal disruptions, physical aggression, property destruction, and elopement, the BIP at issue here focused solely on "noncompliance." That misclassification of the student's behavioral issues, coupled with the district's failure to identify the reasons for her "noncompliant" behaviors, made the BIP deficient.

What exactly is a Functional Behavior Assessment?

- A systematic process for defining a child's specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior
- The purpose of conducting an FBA is to determine whether a Behavioral Intervention Plan should be developed and if so, to assist the Team in identifying appropriate interventions

What do superheroes know?

- Analyze whether the FBA is thorough enough or whether an expert is needed.
- Ensure the FBA tells the team why the behavior is happening and be able to explain the answer – or is thorough enough to identify the fact that there is no singular, identifiable function.
- While you are only required to conduct an FBA in limited circumstances, developing a BIP without conducting an FBA first may result in inadvertently reinforcing a negative behavior.

What is a Behavior Intervention Plan?

- A plan for a child with disabilities, included in the IEP when appropriate, which uses positive behavior interventions, supports and other strategies to address challenging behaviors and enables the child to learn socially appropriate and responsible behavior in school and/or educational settings

What do superheroes do?

- Ensure there are positive strategies included.
- Discipline referrals should not be the only data collected for behavior.
- Know your parents and whether you have to include any discipline that could ever occur.
- Ensure implementation by all staff and ensure the plan is implemented with fidelity.

Parental Concerns

This section should contain all parental concerns related to the education of their child and any other issues that they would like to be addressed by the Team



SBOE Rule 160-4-7-.06(18)(a)(2)(IDDF (6))

What do superheroes know?

- Ensure the section is accurate.
- If parents bring in their own list, simply reference the list and attach it to the IEP.
- It is a good idea to have a statement in the minutes that all parental concerns have been addressed, if they have.
- As parents complain about different issues throughout the IEP meeting, you can put those concerns in the parent concerns section – use this as a running tab of sorts.

Goals and Objectives

- “A statement of measurable annual goals, including academic and functional goals designed to (1) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (2) meet each of the child's other educational needs that result from the child's disability.”

What do superheroes know?

- Virtually all goals should include some sort of measure by data collection, even if it also includes another measure.
- The student's baseline should either be incorporated in the goal or drive the goal in some way.
- Goals should be measured at a fairly high percentage or else you need to re-assess the goal.
- You should not have goals that simply re-state the Common Core-Georgia Performance Standards (CC-GPS) or state that a student will make a certain grade in a class – that is what the CC-GPS and grades already exist for...

Accommodations / Student Supports

- The IEP must include instructional and classroom testing accommodations and student supports and/or supports for personnel to allow the student to advance appropriately toward attaining annual goals, be involved in and make progress in the general curriculum, be educated in and participate with other children in academic, nonacademic and extracurricular activities
- The IEP must also include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments

What do superheroes do?

- Make sure accommodations are for the child, not the parent.
- Accommodations should not be modifications.
- If accommodations become modifications, perhaps it is an indication that the IEP Team should review services instead.
- **Do not over-commit.**
- Balance legitimate needs with staff resources.

Placement

- In determining the educational placement of a child with a disability, each LEA must ensure that the placement decision is:
 - (1) made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
 - (2) made in conformity with the LRE provisions contained in the State rule;
 - (3) made at least annually, is based on the child's IEP and is as close as possible to the child's home.

What do the Courts say?

- A district has a right to be concerned about a student's aggressive or violent behaviors. However, those concerns by themselves cannot dictate the student's placement on the LRE continuum; the district must consider whether it can meet the student's needs in a less restrictive setting. Here, psychologists testified that the student was on "high alert" throughout the school day because he was frightened of authority figures. Their testimony that the student was highly intelligent and motivated to succeed convinced the court that the student could excel in a general education setting with appropriate services and supports. *Troy Sch. Dist. v. K.M.*, 65 IDELR 91 (E.D. Mich. 2015).

Change of Placement

- A change in location is not always a change in placement. A placement is a point along the child's continuum of placement options, while a location is the physical location where the child receives related services, such as a classroom. However, a change in location may rise to a change in placement if the change in location substantially alters the student's educational program. 71 Fed. Reg. 46,588 (2006). *See Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

What do superheroes know?

- Placement is not decided by the parent alone.
- Make sure you consider the continuum of placements.
- Make sure placement determined is the LRE for the student.

FAPE and LRE: Understanding What They Mean

- A free appropriate public education (FAPE) must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 160-4-7-.18 Discipline

34 C.F.R. §300.101(a); 34 C.F.R. §300.530(d)

Legal Resources for Georgia Administrators – Students – [BOE v. Rowley](#) (FAPE)

Legal Resources for Georgia Administrators – Students – [JSK v. Hendry](#) (FAPE)

FAPE and LRE: Understanding What they Mean

- Least Restrictive Environment (LRE)
 - (a) Each LEA shall have policies and procedures to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions and other care facilities in Georgia shall be educated with children who are not disabled
 - (b) Special classes, separate schooling or other removal of children with disabilities from the regular class environment shall occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily

FAPE- What is it and how has it changed?

- In *Rowley*, the Supreme Court established the following two-part test that courts should use to decide the appropriateness of a student's education:
 - Has the district complied with the procedures set forth in the IDEA?
 - Is the IEP, developed through the IDEA's procedures, **reasonably calculated to enable the child to receive educational benefits?**
- The Supreme Court held that when this two-part test is satisfied, the district has complied with the obligation imposed by Congress, and it is required to do no more.

FAPE requirements:

- *Rowley* did not define “educational benefit” other than to hold that school districts are not required to “maximize” a disabled child’s educational potential.
- In *Rowley*, the Supreme Court made it clear that the IDEA does not require districts to provide students with disabilities with the best possible education. Referring to the minimal level of benefits that an appropriate educational program must confer, the Supreme Court termed the state's obligation as being the provision of a “basic floor of opportunity.”

Rowley acknowledged one size fits all approach won't work

- Articulating a one size-fits-all standard is not an achievable goal for a statute that applies to students with differing abilities. For example, it applies equally to a deaf child, a child learning to eat, to dress, and to toilet represents education, as well as to a child with superior cognitive skills but behavioral challenges.
- While courts have used different adjectives to describe the educational benefits required by *Rowley*, *Rowley* has proved to be a remarkably durable decision in a complex and fact-intensive area of the law.

Andrew F. v. Douglas County School District, **2017 WL 1066260 (2017)**

- What is the level of educational benefit that school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.
- His parents argued that his progress had stalled and that the strategies used to address his behaviors were insufficient to allow him to learn in his classroom.
- Parents' argue that since the Supreme Court first described this requirement over thirty years ago (*Rowley*), federal courts of appeals have become intractably divided over the level of educational benefit the Act demands.

District's Argument

- The District argues that Congress has amended the IDEA five times since *Rowley* was decided, but never expressed concern with this Court's decision or changed the definition of free appropriate public education.
- Nothing in *Rowley* prevents states from creating a higher standard for FAPE and many states have:
 - Michigan - maximum benefit standard;
 - New Hampshire - "equal educational opportunities" standard;
 - Massachusetts - "maximum possible development" standard; and
 - Missouri - "maximizes the capabilities" standard.

The Decision

- In the Tenth Circuit, where Endrew F. lives, the court held that an IEP provides FAPE if “it is calculated to confer an ‘educational benefit [that is] merely ... more than *de minimis*.” But, the Supreme Court disagreed.
- The Court reiterated that the purpose of adopting the Individuals with Disabilities Education Act (IDEA) was to address the fact that children with disabilities were receiving little to no education.

The Decision

- The Court focused on the requirement for a student by student analysis: “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress **appropriate in light of the child’s circumstances.**”
- But there is still no guaranteed outcome:
“... his IEP need not aim for grade-level advancement. But his educational program must be **appropriately ambitious in light of his circumstances**, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have a **chance to meet challenging objectives.**”

What superheroes know: Evidence of progress is key

- There must be data to support that the student is making progress;
- This does not necessarily mean the student has to be making good grades;
- Progress needs to be evidenced within the goals and objectives;
- Be careful when repeating the same goals and objectives year after year; and
- What is important to know is educational benefit looks different for every student.

What superheroes do?

- Be able to show the District is providing FAPE, data showing progress on IEP goals is key.
- Make sure that all teachers are implementing IEP, including BIP.
- Again, remember placement is determined by the team.

Development of a BIP

- According to the IHO's May 2015 decision, the teachers seemed unaware of the connection between the student's conduct and her difficulties with figurative language and changes in routines. "[The BIP] did not inform [the student's] teachers how to handle [the student's] behaviors, which was apparent to the [IHO] from responses given by the teachers 'that they did not understand the noncompliance,'" the judge wrote. Judge Holmes noted that the IHO had evaluated the BIP under the "more than trivial benefit" standard of FAPE -- a standard that had been superseded by the U.S. Supreme Court's ruling in *Endrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017). Given that the BIP failed to meet the lesser standard, the judge explained *Endrew F.* did not alter the outcome of the case.
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Transition and Entitlement to FAPE through Age 21

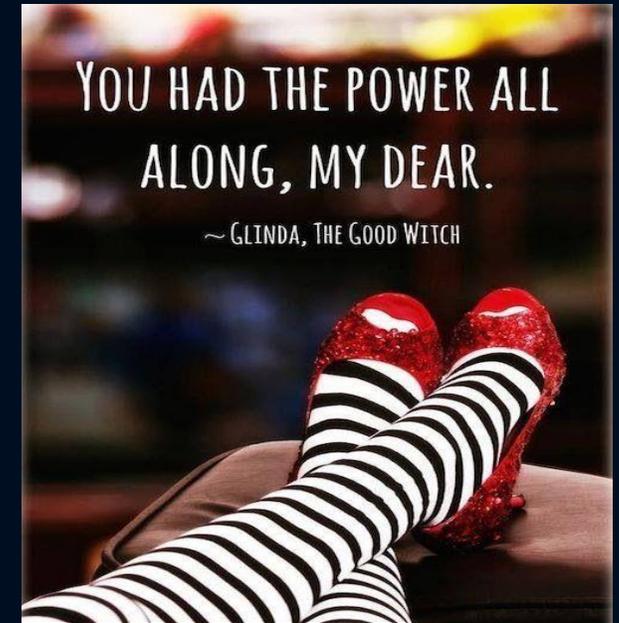
- Beginning not later than 9th grade or age 16 (whichever comes first) or younger if determined by the IEP Team (and updated annually), the IEP must include appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and transition services needed to assist the student in reaching those goals
- Special Education students are entitled to services through age 21 unless they graduate with a regular education diploma
- If a student is receiving services upon reaching age 22, the District shall have a written procedure identifying the process for completing the services – whether the services will cease on the student's birthday or continue until the end of the semester or school year

What do superheroes do?

- Ensure that even your transition plan goals are measurable
- Help students develop transition plans that are practical and useful (is the student really going to be a rock star?) – put parents in touch with resources to the extent possible
- To the extent possible, make sure the student participates in the meeting and “buys in” to the plan – a transition plan is a great opening to get the student to stay and talk about other aspects of the plan in which you need his/her input

So, we survived the meeting.... now what?

- “Post meetings”
- It’s not just about the document –
- the importance of implementing the IEP
- Fidelity of data collection
- Memorializing the IEP
- Does the IEP document meet Prior Written Notice requirements (34 C.F.R. § 300.503) or not?
- Making sure you have open lines of communication within your District so that when a situation gets “hot” you know who to call before bridges are burned





Superhero Pop Quiz

What would Superman Do?

You get a call from a lead teacher and one of your middle schools that they have a student they have tried everything with, but they believe the setting is not right for the student. They want to schedule a meeting to change placement. They explain to you all the behaviors that are disrupting the classroom. The behaviors described are aggressive toward students and staff, verbal outbursts and inappropriate comments. They are at their wits end and have suspended the student. After getting off the phone with the teacher you have a request from the same student's parent with bullet point lists of concerns and a request for a meeting. It also requests that the student be put back his placement while you convene an IEP meeting.

When you look at the behavior intervention plan you see there is one target behavior, but you're not sure exactly what it means.

What would Spiderman do?

You are sitting in an IEP meeting when someone says:

“We agree that your son needs a one-on-one para, but right now we just don’t have the personnel for that.”

Is this ok? You know really don’t have the staff...so, now what?

What would Wonder Woman do?

Steve is in tier 2 RTI for behavior of being very disruptive in his fourth period class. He continues to instigate verbal altercations with staff and students. It seems like some of the interventions are working and some are not. After a severe verbal fight with his ELA teacher he is suspended for one day. The day he returns to school Principal gets an email from his dad requesting a full evaluation with a specific psychologist listed with particular protocols required. He then indicated the student's behavior was deemed to be related to his new diagnosis of ADHD therefore a functional behavior assessment was demanded by Evelyn Expensive BCBA.

The Principal emails back before speaking to you with the following:

Mr. Rogers,

I am in receipt of your email. Steve is in Tier 2 RTI and it is not appropriate to evaluate him at this time. He will continue to be in RTI until we have data to support a referral to special education evaluation.

What would Black Widow do?

You receive an email that says:

“We need 25 hours of ABA DTT weekly, speech services by a certified PROMPT provider, the Linda Mood Bell reading program, Fast ForWord, Sensory Integration Therapy and Interactive Metronome for our daughter in order for her to be functioning on grade level. If you will not provide these services, we expect to be reimbursed for the private providers we have already lined up. Our child’s doctor has written a letter stating these services are critical.”

What would Iron Man do?

- Why “IP” “E” and “M” do not really cut it any more
- Fact Pattern: Teacher and parapro go to great lengths to take “ABC Data” on student's behavior – in a careful review of the data, however, it appears that the two are defining aggression slightly differently. The teacher, who is pleased with the student's improved behavior, is anxious to show the parents her progress and creates graphs. But, the graphs do not take into account the differences in taking data, nor do they take into account that the different school months have different amounts to days. Judge found the graphs to be misleading to the parents impeding their ability to be full participants.

What would Thor do?

You receive the following email:

“I don’t think John needs to be in that special ed class, I think y’all should put a teacher in his regular class that is there for him to ask questions to and for him to get help from that way. It is critical that he is around typical peers as much as possible rather than learning bad behavior from those *other kids*.”

How do you respond?

What would Captain Marvel do?

- Student with disabilities has been having a rough week. He has engaged in daily incidents of aggression towards staff, property destruction and one incident of aggression towards another student.
- Next week, is the grade level field trip to the alligator farm. You do not believe that the student's warrants being able to attend (*all* students were told they must maintain excellent behavior in the month leading up to the field trip) and more so, you are concerned for the safety of your staff and students.
- What do you do? Tell the student he cannot attend? Tell him he can attend only if his mother attends with him? Let him go and pray that all goes well?

What superheroes know no matter which villain they are fighting

- Parents Sue:
 - When they no longer trust the school administrators or teachers
 - When they don't receive timely and useful information
 - When they believe educators do not care what happens to their children
 - When they perceive communication to be rude and demeaning

Once you have made it through all of that....(whew!)....welcome to the world of special education

