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 16th or before entering 9th 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 that statement to 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 responsibility for the implementation of the IEP.