What is IDEA’s 97’s Definition of FAPE?

“The term ‘free appropriate public education’ means special education and related services that—

(A) have been 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, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 614(d).” [Section 602(8)]

What is the States’ Obligation to Make FAPE Available?

Under IDEA 97, States must ensure that:

“A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21,

• including children with disabilities who have been suspended or expelled from school.” [Section 612(1)]

• responsible for ensuring that a student's IEP continues to be implemented even though the student has been removed from the school.

Free Appropriate Public Education

➢ Free— at no cost to parents

➢ Appropriate— suited to the individual needs of the child

➢ Public— Children with disabilities have the right to go to the public school system for their education, just like other children

➢ Education - ensuring equal opportunity and access that children with disabilities to education (including extracurricular activities)

Why is it so important for us to understand FAPE?

• We are coordinating many major portions of the evaluations that determines FAPE issues

• We are part of IEP meetings making FAPE decisions

• Need to learn legal actions and limitations in the process

➢ = we have a potential major role

What is an “Appropriate” Education?

• very vague and subjective definition

• For each student with a disability FAPE is different.

• includes involvement in the general curriculum.

• development of IEP performance goals and indicators

• extended day or school year

• assistive technology
What are some “appropriate” considerations brought to court?

1. Extended school year

Appropriate may mean an extended school year so that benefits from special instruction are not lost over the summer months.

Decision is to be made based on a predictive factor by expert opinion and individual assessment, not on empirical data showing regression of progress.

E.g. regression in two or more skills which takes more than 12 weeks to recoup/ parent’s ability to provide educational structure at home.

Consider degree of impairment, parents ability, availability of resources, type of skill deficits, and student skill level.

2. Extended or shortened day

Courts have favored extended day in place of alternate placement in residential facility shortened day if needed for academic benefit.

3. Assistive technology

Should be made available if needed to receive an appropriate education that is reasonably designed to confer benefit.

How appropriate is appropriate and how was it decided?


A) Is an appropriate education the BEST education?

Outcome:

- Districts are required to provide an appropriate education that is reasonably designed/calculated to benefit the student but not necessarily an ideal perfect educational program.
- No additional requirement that the services provided be sufficient to maximize a child’s potential commensurate with the opportunity provided to other children.

Set forth two questions for decision making:

A) Were IDEA procedures followed?
B) Is the program reasonably designed towards benefit and to address disability?

More recently…

Doe v Board of ed of Tullahoma City Schools, 1993

FAPE does not require a “Cadillac, but does require a “Chevrolet”

Court cases on the issue of….

B) Is the program reasonably designed?

Whoever shows meaningful educational progress wins.

Private vs public

2 different reading programs

Lovaas

If tie, then courts yields to school’s desired program.

Does the FAPE requirement of IDEA guarantee that a student with a disability will achieve his expected level of academic achievement?

NO.

IEP is not an educational contract that guarantee’s certain amount of achievement.
Relies on “good faith effort”

No agency, teacher or other persons can be held accountable if does not achieve growth.

HOWEVER…..
•Must show “some educational benefit”
•How much “benefit” is left up to the courts
•Cases so far say:
  1. More than trivial
  2. Meaningful
  3. Significant learning
  4. Considered in light of student potential
  5. does not include generalization (e.g. destructive behavior decreased at school but not at home)
   but should include the opportunity to generalize skill in daily life.

Letter Overview:
Date: March 15, 2000
Correspondent wrote to President Clinton seeking assistance in obtaining a computer with educational programming for her son with ADHD as well as severe allergies and speech difficulties.
Correspondent felt that the use of a computer by her son at home would be extremely beneficial to him as he progresses through school.

What do you think?

OSEP Department’s Response:
• it is appropriate for parents to raise the need for assistive technology (AT) in an IEP meeting.
• public agency is obligated to ensure that AT devices are made available if required as part of the child’s special education; related services; or supplementary aids and services. (§300.308)
• Regulations with respect to AT states that:
  ° the determination as to whether an AT device is required in order for a child to receive FAPE must be made on an individual basis, and
  ° the decision as to whether a child may use a device in settings other than the child’s school also must be made on an individual basis.

“these determinations must be made by the participants on the student’s IEP team.
° if the IEP team determines that the student needs to take a required AT device home that device must be provided at no cost to the parents.
° a parent is accorded procedural safeguards, including the right to request a due process hearing on issues involving the provision of assistive technology to the child.
° if a parent believes the LEA is violating any of the Part B requirements, he or she can file a complaint with the SEA. The SEA must have minimum complaint procedures for resolving all such complaints.

How is an "Appropriate" Education Determined? 😊
1. Multiple documented assessment sources
2. IEP Team uses the evaluation information to identify appropriate IEP goals and objectives based on student’s areas of strength and weakness
3. The goals dictates appropriate special education and related services
4. Team Considers LRE

What are Related Services? 😊
services that may be required to assist a child with disabilities to benefit from special education.
What exactly is a “Free” Education?

- Services are free of charge to parents/guardians
- NOT necessarily free to other government agencies!
- But cannot indirectly affect parent also
  For example, if insurance pays, then parents fees goes up!
  Hence, this is an extra financial burden to the parents

What expenses are covered under IDEA?

1. Educational programming
   - what about self-help skills? Not in courts yet
2. Related services
   - Includes assessment and identification costs
     - If assessments are needed to determine special education program, then schools pays even if parents insurance covers it
3. Procedural protections
   - responsible for due process hearing
4. School records

What about Budgetary constraints?

1. MILLS V. BOARD OF EDUC., 1972
   Schools reported that...
   - it is impossible to afford plaintiffs the relief they request unless:
     (a) Congress appropriates millions of dollars to improve special education services; or
     (b) These defendants divert millions of dollars from funds already specifically appropriated for other educational services in order to improve special educational services. These defendants suggest that to do so would violate An Act of Congress and would be inequitable to children outside the alleged plaintiff class.

Court reply….

- required by the Constitution and their state regulations to provide a publicly-supported education for “exceptional” children.
- Their failure to fulfill this duty cannot be excused by the claim that there are insufficient funds.
- "If sufficient funds are not available to finance all of the services and programs that are needed in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the “exceptional” or handicapped child than on the normal child. ”

2. Upheld in more recent cases...

   Washington State for the Deaf, 1995

   Why?
   - Deaf student sent home from residential school since school could not afford a dormitory assistant who was essential to the student's safety in the dorm setting

   Outcome:
   - School was not providing appropriate education

   Given one choice = Cost is not a factor for the provision of an appropriate education

   Given two choices = Court cases have supported choosing the less expensive choice BUT if decision is made with consideration of individual needs and not based SOLELY on cost factor

   E.g., Lovass, reading programs
4. Cost of supplemental aids and services required for inclusion is considered excessive if...

• no specific dollar amount but standard is “undue hardship” test in the courts

° by balancing needs of handicapped child with needs of others in district

° If cost is so great that significantly impacts education of other children then reg ed not appropriate (e.g. full time teacher)

Letter Overview
Date: August 11, 1999

wrote to his Congressman questioning how school districts would be able to finance the services that they will be required to provide to certain students

proposed that the statute be amended to exclude from coverage the types of services at issue in Cedar Rapids case.

requested that the Congress fully fund the IDEA at the 40% level projected in the law.

one of several letters to the Department

Relevant Facts
Supreme Court concluded that IDEA requires district to provide Garret F. with the nursing services he requires during school hours, since these services are “school health services” and not the type of “medical services” that are excluded from the Act’s coverage. [read pg. 173 in Rothsten]

“Medical services” excluded from coverage are those services provided by a licensed physician except where the physician is providing services that are diagnostic and evaluation services. [§300.24(b)(4)]

Children with disabilities are entitled to receive (at no cost to themselves or their families) the related services that are necessary to allow them access to public education with their nondisabled peers. This includes school health services that can be provided at school by non-physicians.

Department’s Response
The Supreme Court’s decision is consistent with IDEA which ensures that all children with disabilities have available to them FAPE emphasizing special education and related services designed to meet their unique needs.

Therefore, the Department does not believe that any amendments to IDEA’s definition of “medical services” are needed.

The number of children across the country who require the type of one-on-one attention that Garret F. does is, by all available estimates, small.

Department’s Response (cont.)

The IDEA has provisions designed to help districts provide special education and related services.

—Mechanisms such as interagency agreements must exist in each State that require non-educational agencies (such as Medicaid) to provide and pay for the special education and related services that they are otherwise responsible for.

—These agreements must include reimbursement procedures, so that the schools get paid if they provide a service that another agency covers.

—States can use a portion of the IDEA grant to help districts pay for high cost children.

—States and school districts can also use a portion of their IDEA grant to set up and run coordinated services systems designed to improve results for all children, including those with disabilities.

With respect to IDEA funding:

—IDEA refers to up to 40% of the average per pupil expenditures in public schools. Thus, the provision sets a ceiling on the amount of funding that may be provided to States.

—school are receiving large Congressionally-driven increases in the past several years.

—States should take advantage of all flexibility in establishing and accessing other State and Federal programs to support the costs of special education and related services.
How do you legally determine placement if to adhere to FAPE?

First multiple assessment evaluate

write IEP

decide placement with IEP team to decide how to meet goals
decision based on

test results, adaptive skills, physical condition,
teacher/parent recommendations, background

must be in conformity of LRE
(later lecture)

If change placement, must be supported by current IEP or write new one first and then determine placement.

Kiyoshi

Kiyoshi is a highly competent student, but has a long history of antisocial behavior. He is quick to anger, & minor events quickly escalate to major confrontations. He has few friends, & most of his conflicts occur with peers in hallways & cafeteria & on bus. In last 2 months, he has been given 8 days of in school detention & 6 days of out of school suspension. In a recent event, he broke glasses of another student.

Although his teachers report that he can do the work, he is currently getting D’s and F’s in the core classes with the exception of Math.

What would be possible appropriate education?

Summarizing FAPE

1. Goal of FAPE:
provide reasonable assistance to enable a child to receive equal opportunity to receive educational benefits with good faith effort

2. FAPE court decisions made with consideration of harm to child’s education and level of educational performance

3. FAPE not provided if child not given the DEVELOPMENT OF
individualized
- educational methods (if compared could be a problem)
- Educational goals
- Educational related services
- Meets federal standards (more not less)
- Free but not at expense of others
- ALL developed to help obtain “meaningful” educational benefits
- ALL suitably addressing disability evaluated

FERPA and IDEA
(same except FERPA IS general ed kids too)

Question 1:
What are the requirements for handling educational records?

- IDEA 97 clarifies that parents have the right to inspect and review all of their child’s educational records, not only those that are relevant to whatever issue or concern has arisen.

Question 2: What are education records?

IDEA reports...

...Inspect and review all education records with respect to—
(i) The identification, evaluation, and educational placement of the child; and
(ii) The provision of FAPE to the child

Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974)

FERPA: “Education records”
(a) The term means those records that are:
(1) Directly related to a student; and
(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.
(b) The term does not include:
(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

“Record” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
Question 3: What about school psychologist “case” notes?

MAYBE

NO if mere memory aids and not seen or used by others

YES if personally identifiable, in connection with treatment, used or seen by any other person

Question 4: What about viewing Standardized Tests?

• If personally identified, then parents have the rights to
  the record
• not considered an educational record if there is no
  personal information that directly relates the
  information to the student

504 has rights to all relevant records
(regardless of personal identification)

Question 5: What are parents specific access rights?

• to inspect and review any education records
• without unnecessary delay and before any meeting regarding
  an IEP and in no case more than 45 days after the request has
  been made.
• to an explanations and interpretations of the records;
• to request copies of the records containing the information if
  failure to provide those copies would effectively prevent the
  parent from exercising the right to inspect and review the
  records
• to have a representative of the parent inspect and review the
  records.
• to request a list of the types and locations of education
  records collected, maintained, or used by the agency.

Some circumstances…

CASE 1: unless the agency has been advised that the
parent does not have the authority under applicable State
law governing such matters as guardianship, separation, and divorce.

CASE 2: If any education record includes information on
more than one child, the parents of those children have the
right to inspect and review only the information relating to
their child or to be informed of that specific information.

CASE 3: May charge a fee for copies of records that are
made for parents under this part if the fee does not
effectively prevent the parents from exercising their right to
inspect and review those records.

Question 6: What are the requirements for Amending
Records?

• Parents have rights to amend if feel records are
  misleading, in violation of private rights or inaccurate
  information
• if school does not make changes, school must notify
  the parents within a reasonable time
• school and/or parent has the right for a hearing
Question 6: What are the confidentiality issues concerning records?

Must have written permission from the parent or eligible student before releasing any information from a student's record.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents about directory information and allow parents a reasonable amount of time to request that the school not disclose the directory information.

Schools must notify parents and eligible students annually of their rights under FERPA.

Question 7: What are the exceptions for disclosing records?

• To other school officials in system working to help child's education
• Other schools to which a student is transferring;
• Appropriate parties in connection with financial aid to a student;
• Individuals who have obtained court orders or subpoenas;
• Persons who need to know in cases of health and safety emergencies; and State and local authorities, within a juvenile justice system, pursuant to specific State law.
• To person who has a legitimate educational interest (Dr., video at hearing, residential placement)
• Certain government officials to carry out lawful functions;
• Organizations conducting certain studies for the school;
• Accrediting organizations