

# Hot Off the Press: Special Education Legal Update

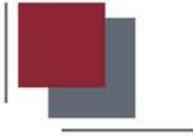
California Consortium for Independent Study  
Spring Conference  
Rohnert Park, CA  
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Presented by:  
Heather M. Edwards

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# Overview



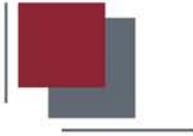
- Important Decisions from the Courts
- Office of Administrative Hearings  
Orders/Decisions
- Other State and Federal Guidance

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# Modified FAPE Standard

*Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017)



- U.S. Supreme Court issued long-anticipated ruling reversing the Tenth Circuit's use of a "*de minimis* benefit" test when determining whether an IEP sets out appropriately challenging educational goals.
- Expanded on the long-established Supreme Court decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982), which set the "some educational benefit" standard of FAPE for students with disabilities.

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# Modified FAPE Standard

*Andrew F. v. Douglas County School District RE-1, 69 IDELR 174 (2017)*



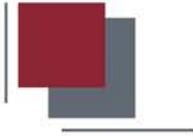
- Held that an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

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# Modified FAPE Standard

*Andrew F. v. Douglas County School District RE-1, 69 IDELR 174 (2017)*



- Still no bright-line test.
- Must be determined on a case-by-case basis because adequacy of IEP turns on the unique circumstances of the child for whom it was created.
- Courts should give deference “based on the application of expertise and the exercise of judgment by school authorities” and cannot “substitute their own notions of sound educational policy for those of the school authorities which they review.”

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# *Andrew F.* – Business as Usual?



- Yes and No.
- For most Circuits, *Andrew F.* standard more restatement than a departure from existing FAPE standards.
- 9<sup>th</sup> Circuit already had higher standard than 10<sup>th</sup> Circuit's "more than *de minimis*" standard.
  - At times used the term "meaningful" to describe its FAPE formulation.



# *Andrew F.* – Business as Usual?



- Local educational agencies must continue to:
  - Emphasize compliance with the IDEA's procedural requirements; and
  - Offer IEPs and programs that you can demonstrate will provide (or are reasonably designed to provide) educational benefit and progress that is meaningful to each child with a disability, based upon that child's circumstances.

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# Andrew F. – Business as Usual?



- Emphasize development of **quantifiable** goals.
- Collect data to develop baselines to develop **robust, detailed and measurable goals** for the child's expected performance of each skill after a year's time.
- Are you repeating goals from the previous year?  
This is a red flag!
  - Are you not accurately documenting progress?
  - Was the goal statement too generic?
  - Has the child really not been making progress, and is the team really analyzing why?



# *Andrew F.* – Business as Usual?



- Don't underestimate importance of thorough assessments to determine student's "circumstances" (a.k.a., strengths, areas of need).
- Have strong procedures in place for data-collection, monitoring and reporting on the child's progress toward his or her IEP goals throughout the year.



# 9<sup>th</sup> Circuit Interprets Modified FAPE Standard

*M.C. v. Antelope Valley Union High Sch. Dist.*, 69 IDELR 203 (9th Cir. 2017).

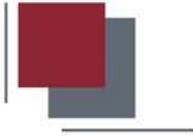
- 9th Circuit may be edging toward a "maximization of potential" standard of FAPE, as evidenced by its statements interpreting *Endrew F.*
  - In other words, the school must implement an IEP that is reasonably calculated to **remediate** and, if appropriate, accommodate the child's disabilities so that the child can make progress in the general education curriculum, **commensurate with his non-disabled peers, taking into account the child's potential.**

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# Federal Guidance on *Endrew F.*

*Questions and Answers on Endrew F. v. Douglas County Sch. Dist. Re-1,*  
117 LRP 50044 (EDU 12/07/17)



- On December 7, 2017, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) released a Q&A document addressing the *Endrew F. decision*.
- Provides a discussion of the FAPE requirements and includes questions addressing implementation considerations.

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# Correcting Typos in IEPs

*M.C. v. Antelope Valley Union High School District*, 858 F.3d 1189 (9<sup>th</sup> Cir. 2017)

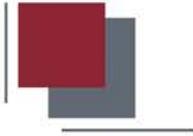


- **FACTS:** After parent consented to student's IEP, the school district realized that it had inadvertently written in the IEP 240 minutes of vision services per *month* instead of the agreed-upon frequency of per *week*.
- District provided at least 240 minutes of vision services per week.
- District corrected the IEP a month later, but parent first learned of the correction during the due process hearing.

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# Correcting Typos in IEPs



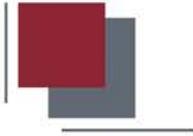
*M.C. v. Antelope Valley Union High School District*, 858 F.3d 1189 (9<sup>th</sup> Cir. 2017)

- **HELD:** The district's post-meeting increase in the student's service minutes impeded the parent's ability to monitor IEP implementation.
- The court explained that an IEP is "like a contract." And just like a contract, an IEP cannot be changed unilaterally.
- If the district discovered that the IEP did not reflect its understanding of the parties' agreement, it was required to notify the parent and seek consent for any amendment.

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# Assessing for Dyslexia and Dysgraphia



*Avila v. Spokane School District 81* (9<sup>th</sup> Cir. 2017) 69 IDELR 204, unpublished

## FACTS:

- Parents of a student with autism alleged failure to evaluate their son for dyslexia and dysgraphia and sought an independent educational evaluation.
- District did not refer to specific reading and writing disorders as dyslexia or dysgraphia. Instead, the district evaluated for "specific learning disabilities"
- Specifically, the district assessed Student for reading fluency and fine motor skills aimed at detecting writing inefficiencies using a battery of tests.
- Many of the same tests were administered by the parents' private evaluator.

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# Assessing for Dyslexia and Dysgraphia



*Avila v. Spokane School District 81* (9<sup>th</sup> Cir. 2017) 69 IDELR 204, unpublished

- **HELD:** The District's assessments were broad enough to cover dyslexia and dysgraphia such that parents were not entitled to an IEE.
- The label assigned to a particular assessment is less important than the skill areas it evaluates.
- As long as the district appropriately assesses the student in all areas of suspected disability, it should have little to fear of an IEE request.

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# CDE Releases Dyslexia Guidelines

<http://www.cde.ca.gov/sp/se/ac/documents/cadyslexiaguidelines.pdf>

- On August 14, 2017, the California Department of Education released “The California Dyslexia Guidelines,” as required by Assembly Bill 1369 (2015) and California Education Code Sections 56334 and 56335.
- The 119-page Guidelines are intended to assist regular education teachers, special education teachers, and parents in identifying, assessing, and supporting students with dyslexia.
- **Not binding** on local educational agencies or other entities.
- The Guidelines draw on both current research and the collective professional wisdom and experience of the members of the Dyslexia Guidelines Work Group, which met in a series of seven meetings from April 2016 through March 2017.

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# IEPs Must Address Transition Between Settings

*R.E.B. ex rel. J.B. v. State of Hawaii Dep't of Educ.*, 117 LRP 38439 (9th Cir. 09/13/17).

- **FACTS:** Student with autism attended a private preschool school for students with autism and other special needs.
- In kindergarten, IEP team convened to develop an IEP to transition student into public school for the first time.
- District proposed the child would receive specialized instruction in the general education setting for science and social studies “as deemed appropriate” by his teachers.
- Parents were concerned about the increase in number of students in public school and changes to the student’s daily routine.
- District proposed a “transfer plan meeting” after the IEP was complete to address concerns.

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# IEPs Must Address Transition Between Settings

*R.E.B. ex rel. J.B. v. State of Hawaii Dep't of Educ.*, 117 LRP 38439 (9th Cir. 09/13/17).

- **HELD:** LEA should have discussed the parent's transition-related concerns during the IEP meeting.
- While IDEA only addresses "transition" services with regard to postsecondary planning, an IEP is required to include "supplementary aids and services" to ensure the child makes progress.
- Also, IEP did not include enough detail about frequency, location and duration of services.
- Instead, IEP team improperly delegated decision-making to school staff and language was too vague to allow for measurable IEP implementation.

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# Bullying

*Colton Unified School District, OAH Case No. 2017060750*



- **FACTS:** Parent complained multiple times about bullying of their kindergartner with autism and a speech and language impairment.
- At an IEP meeting, District informed parents that there was a complaint form they could fill out.
- Parents alleged the District denied Student FAPE by failing to address the bullying.

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# Bullying

*Colton Unified School District, OAH Case No. 2017060750*



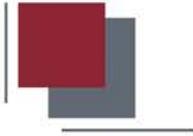
- **HELD:** District denied student FAPE by failing to address the reported bullying.
- Formal procedures for investigating bullying are separate from the IEP team's obligations to address the impact of bullying on FAPE.
- Did not matter that reports of bullying were disbelieved or that team felt claims were better handled by the school's discipline process.
- IEP teams should at least discuss the issue, document the conversation, and determine the impact, if any, on a student's receipt of FAPE.

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# Non-Attorney Advocates

California Attorney General Opinion. No. 14-101 (September 28, 2017)



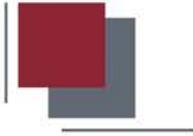
- IDEA and/or California Education Code do not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings.
- OAH has followed this opinion letter in a few cases where non-attorney “advocates” had filed a complaint on behalf of a parent.

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# Non-Attorney Advocates

California Attorney General Opinion. No. 14-101 (September 28, 2017)



- Parents have the right to have an individual with special knowledge or training with respect to the problems of children with disabilities accompany and advise parents in due process proceedings.
- LEAs need to proceed by communicating directly with the parent in due process matters involving non-attorney advocates.
- If you have written consent from the parent to release information to the advocate, you may provide courtesy copies of communications to parent.

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# Clear Offer of Speech Services

*Tamalpais Union High School District v. D.W., 117 LRP 41035 (N.D. Cal. 2017)*



- **FACTS:** 16 year old student eligible under category of speech and language impairment and OHI due to ADHD.
- Before high school, Student never attended public school and attended a private school for students with learning challenges.
- District conducted assessments and convened an IEP team meeting before the start of high school.

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# Clear Offer of Speech Services

*Tamalpais Union High School District v. D.W.*, 117 LRP 41035 (N.D. Cal. 2017)



- Team offered placement in a general education classroom with 1 period of resource specialist support each day, individual and group speech and language therapy for 45 minutes per week, and various accommodations.
- On the IEP, the boxes were checked for both individual and group services. The IEP meeting notes described the services as “combination of individual and group.”
- Parent observed the placement, and decided to place student in a private high school and seek reimbursement from the District for failure to provide FAPE.

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# Clear Offer of Speech Services

*Tamalpais Union High School District v. D.W.*, 117 LRP 41035 (N.D. Cal. 2017)



- **HELD:** The District’s “checkbox approach” to speech and language services constituted a procedural violation of IDEA.
- Language of IEP was too vague to understand the nature, frequency and duration of services.
- Even though District verbally explained to parents that the offer included a 45 minute pragmatic social skills group – IEP did not reflect that.
- Failed to provide the required “blueprint for enforcement”.
- Parents awarded one year of private school tuition and transportation expenses as a remedy.

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# Parent Not Entitled to Stay Put Due to Parent's Failure to Complete Enrollment Paperwork

OAH Case No. 2017110683

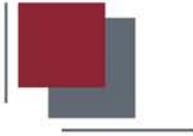


- **FACTS:** Charter School developed a new IEP which was disputed by Parent in a due process complaint. Parent claimed stay put but failed to complete an independent study master agreement which was required for re-enrollment for the following school year.
- Parent had signed the master agreement to complete re-enrollment the prior two years.
- Parent was asked repeatedly to sign the master agreement, including in an IEP meeting.
- Charter School notified the school district of residence that the student was no longer enrolled.
- **HELD:** Parent was not entitled to stay put due to Parent's disenrollment due to failure to complete the paperwork required to maintain student's enrollment for the following school year.

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# Questions



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# THANK YOU



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