



"WITH FIDELITY":
RHETHORICAL
FLOURISH OR
SPEED TERM OF
ART?

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LLP





WELCOME

Today, I would like to speak to you about the concept of the IEP as a legally binding document and where we are seeing that intersect with parent/student advocates and attorneys construing IEPs and their provisions.



INTRODUCTION

There is no doubt that the IEP is a document that should be followed. And since the creation and implementation of IEPs are described by Federal statute (the IDEA), they are “legal documents.”



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INTRODUCTION

But what we are seeing more of, in attending IEP Team meetings and Due Process Hearings, is parent/student advocates and attorneys almost likening IEPs to contracts. This presentation will explore that trend, and will also expand upon the importance of following the IEP with fidelity, and where that concept originated.



WHAT ARE WE SEEING?



Meanwhile, this shift or emphasis is also apparent in how school staff are questioned at Due Process Hearings, when there is perhaps disagreement between a parent and a school district over how to best educate a child on an IEP or, even more commonly, over placement and/or discipline of students on IEPs and, especially, BIPs.



WHAT ARE WE SEEING IN HEARING?



REAL WORLD EXAMPLE 1

Q. When you say "District special education staff," is that the SPED director of the District or somebody else?

A. I believe a SPED director would have access to [the IEP documents], but they're not the ones creating it.

QUESTIONING IN DPH:

Q. And maintenance of **or making sure that it's maintained with fidelity,** who would we need to talk to about that?

A. I believe it would be the case managers because they're the ones in the meetings, signatures and
: : creating them.

REAL WORLD EXAMPLE 2

Q. So because the IDEA requires fidelity to the information that's contained in the documents, if those dates can be changed after the fact, do you know how a parent can ensure that what was required is actually being done?

QUESTIONING IN DPH:

A. It wasn't changed after the fact. It was put in there before the parent agreed, and the parent agreed to that amendment, and then the team finalized it.

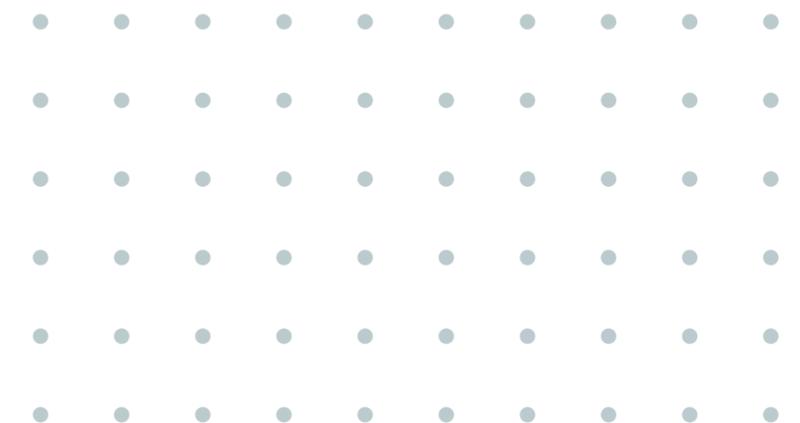
Q. Ostensibly? That's what you were told?



REAL WORLD EXAMPLE 3

IN CLOSING ARGUMENT:

“Guess what? The School District has an obligation to ensure that an appropriate IEP is written, not parents. It doesn’t matter if they like her. It doesn’t matter if they hate her. It doesn’t matter. **The School District has an obligation to ensure that an appropriate IEP is drafted, and that once the IEP is drafted, that it is implemented with fidelity, without deviation.**”



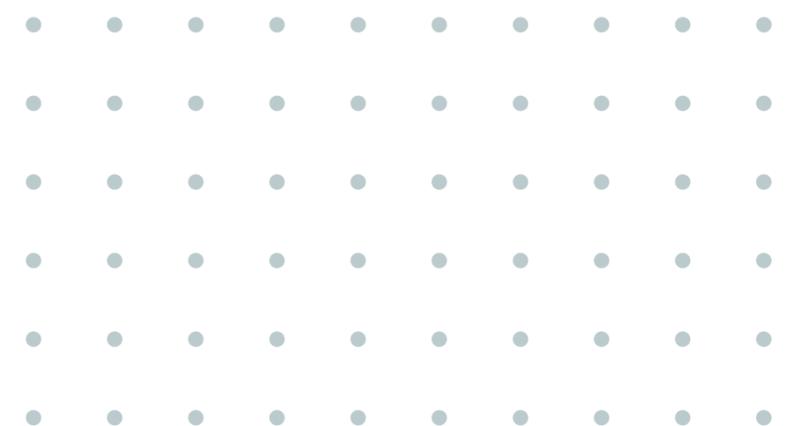
REAL WORLD EXAMPLE 4

QUESTIONING IN DPH:

Q. Did you follow [Student's] IEP with fidelity?

A. Yes.

Q. Did [Student] have self-injurious behaviors while you were -- were you aware of any self-injurious behaviors that [Student] was exhibiting?



REAL WORLD EXAMPLE 5

Q. Great. What is your understanding of the importance of following an IEP with fidelity?

A. It's the law.

QUESTIONING IN DPH:

Q. Well, if the IEP must be followed with fidelity, as we talked about before, how is it that you were planning to provide these services to [Student] where he was at?

.....

A. I didn't know where he was at at the time.



REAL WORLD EXAMPLE 6

QUESTIONING IN DPH:

Q. All right. Now, is it important for you at the school to follow an IEP with fidelity?

A. Yes.

Q. Why?

A. It's a document that we are told to follow and it has legal standings.

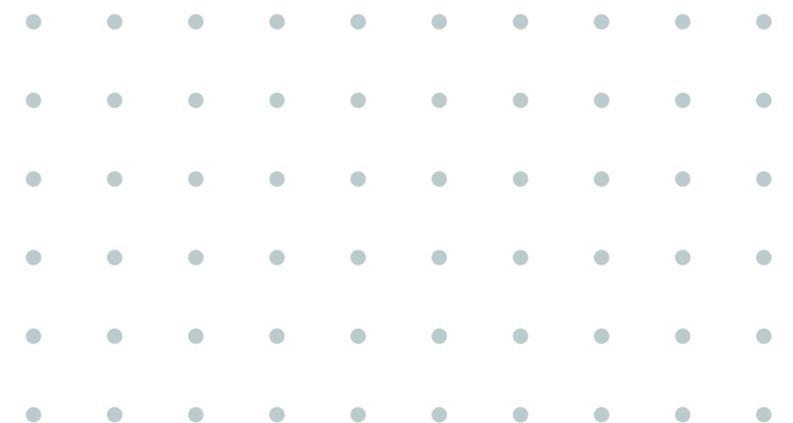


REAL WORLD EXAMPLE 7

QUESTIONING IN DPH:

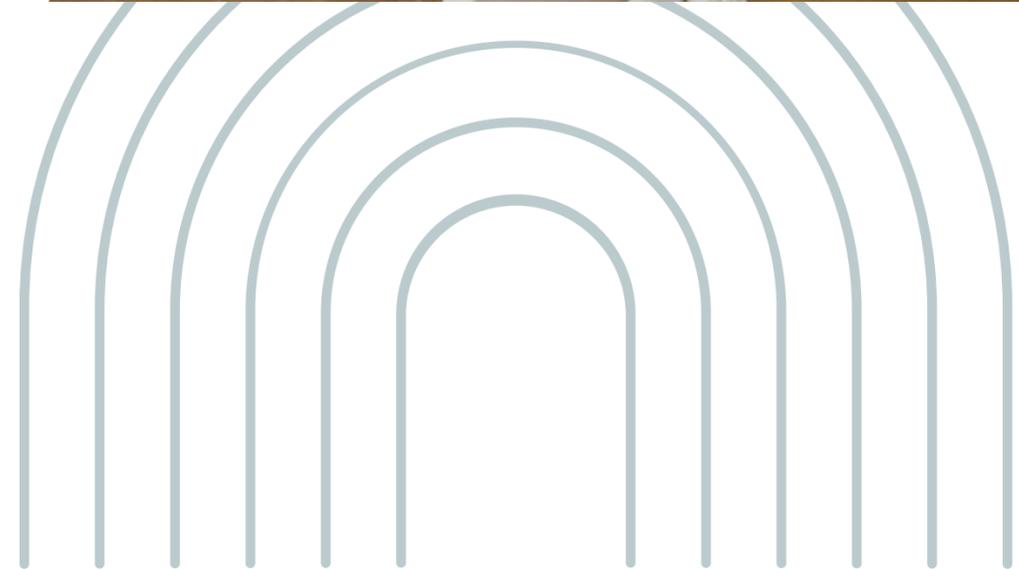
Q. And it would be important to implement [the IEP with BIP] with fidelity so that the child can get used to it?

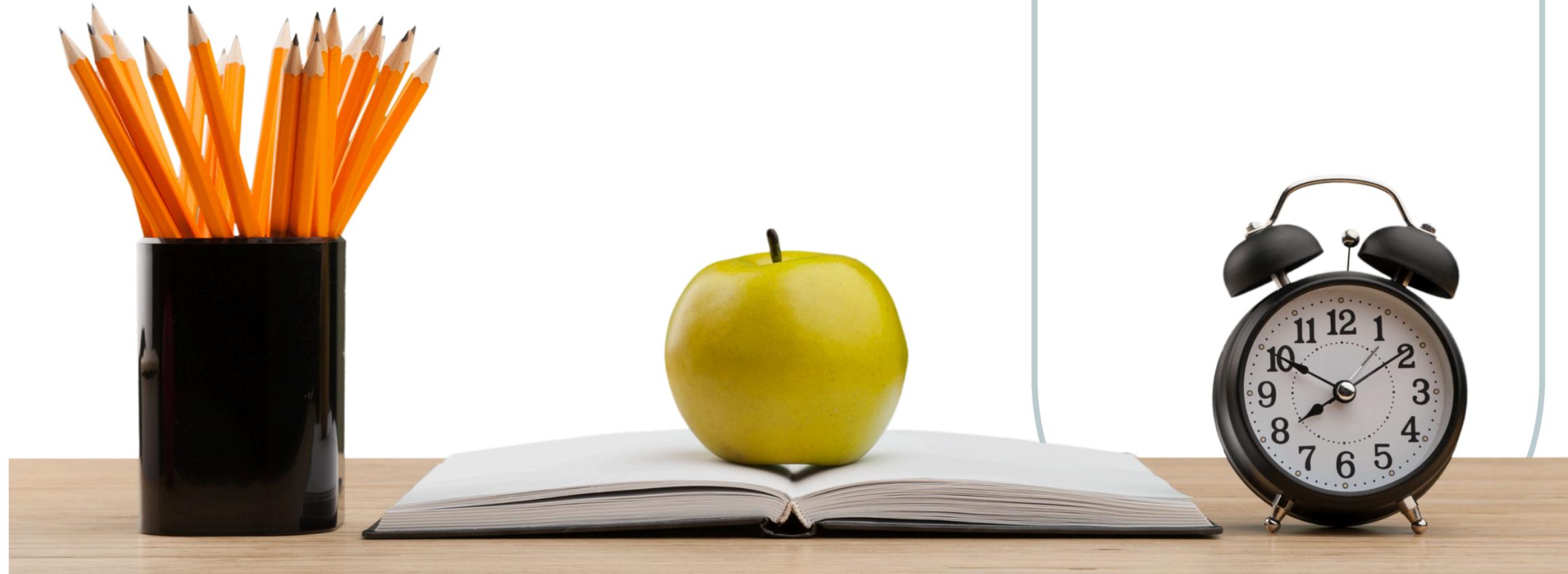
A. Yes.



REALITY CHECK:

Based on those questions, and even some of those answers, might it surprise you to learn that the text of the IDEA does not include the word “fidelity” or the phrase “with fidelity”?

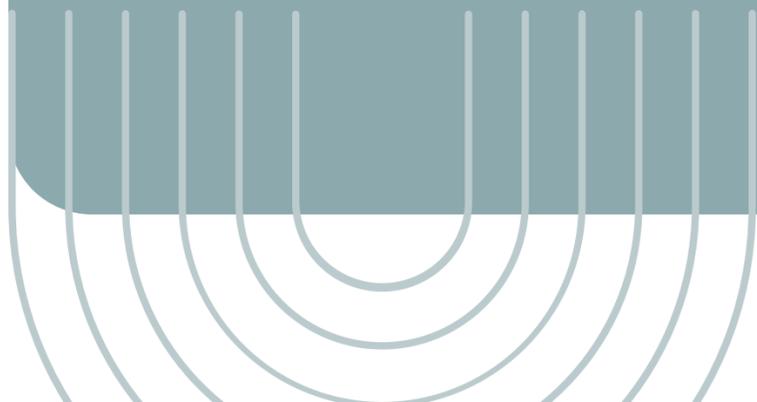




GUT CHECK VESUS REALITY CHECK:

Of course the goal is always to implement the IEP with fidelity, but the IDEA does not define what that means, because it does not discuss the concept.

**STATUTORY TEXT
VERSUS AGENCY
GUIDANCE (THE LAW,
OR BEST PRACTICES?)**



The IDEA:

The IDEA is codified (in the United State Code) at 20 U.S.C. Sec. 1400 *et seq.*

It is also codified in the Code of Federal Regulations at 34 CFR 300.1 *et seq.*

They are the same thing, the identical statute.





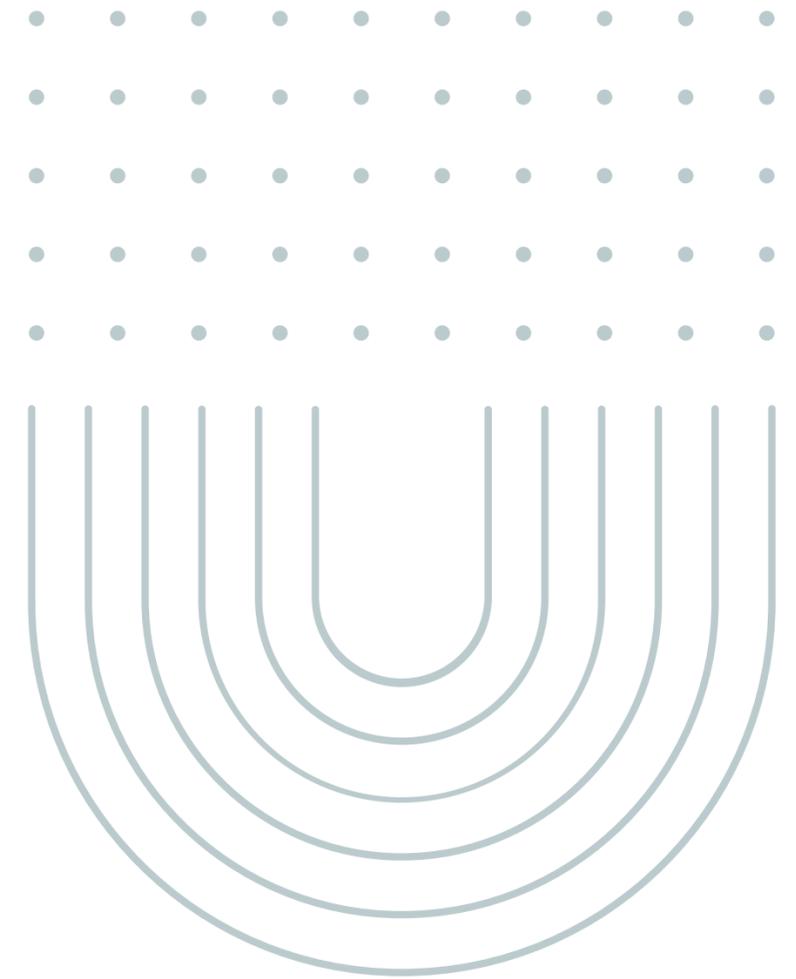
STATUTORY LANGUAGE

The plain language of the statute does not include the word “fidelity.”



GUIDANCE

References to “fidelity” occur, *inter alia*, in agency guidance and interpretative letters.



THE IDEA



WHAT GUIDANCE SAYS ABOUT FIDELITY OF IMPLEMENTATION



***BUILDING AND SUSTAINING INCLUSIVE
EDUCATIONAL PRACTICES (JANUARY
2025, U.S. DEPT. OF EDUCATION)***

“SCHOOL LEVEL SCHOOL ADMINISTRATORS PLAY AN IMPORTANT ROLE IN CREATING AND IMPLEMENTING SYSTEMS THAT ARE DESIGNED TO SUPPORT INCLUSIVE EDUCATIONAL PRACTICES BY:

- ENSURING THAT INCLUSIVE EDUCATIONAL PRACTICES, MATERIALS, AND INTERVENTIONS ARE AVAILABLE AND IMPLEMENTED WITH FIDELITY...”**

“USING THE SWIFT FIDELITY OF IMPLEMENTATION TOOL, LEAS AND SCHOOLS ARE IMPLEMENTING A MULTI-YEAR PROFESSIONAL LEARNING SEQUENCE FOR GENERAL AND SPECIAL EDUCATORS TO ALIGN INSTRUCTIONAL PLANNING FOR STUDENTS WITH DISABILITIES IN THE GENERAL EDUCATION CURRICULUM.”

([HTTPS://SWIFTSCHOOLS.ORG/DOCS/SWIFT-FIDELITY-OF-IMPLEMENTATION-TOOL-DEVELOPMENT-AND-PRELIMINARY-TECHNICAL-ADEQUACY/](https://swiftschools.org/docs/swift-fidelity-of-implementation-tool-development-and-preliminary-technical-adequacy/))

***OSEP GUIDANCE ON FUNCTIONAL
BEHAVIORAL ASSESSMENTS AND
BEHAVIORAL SUPPORT PLANS***

**“COMPONENTS OF A BEHAVIORAL PLAN
(BSP/BIP) GENERALLY INCLUDE:**

...

- DETERMINING THE SCHOOL PERSONNEL RESPONSIBLE FOR IMPLEMENTING THE PLAN AND HOW THE PLAN WILL BE IMPLEMENTED WITH FIDELITY THROUGHOUT THE SCHOOL OR EARLY CHILDHOOD PROGRAM...”**

“THE CENTER ON PBIS DEFINES PBIS AS AN EVIDENCE-BASED, TIERED FRAMEWORK FOR SUPPORTING STUDENTS’ BEHAVIORAL, ACADEMIC, SOCIAL, EMOTIONAL, AND MENTAL HEALTH. ACCORDING TO THE CENTER ON PBIS: ‘WHEN IMPLEMENTED WITH FIDELITY, PBIS IMPROVES SOCIAL EMOTIONAL COMPETENCE, ACADEMIC SUCCESS, AND SCHOOL CLIMATE.’ FOR MORE INFORMATION ABOUT PBIS, VISIT: [HTTPS://WWW.PBIS.ORG/PBIS/WHAT-IS-PBIS.](https://www.pbis.org/pbis/what-is-pbis)”

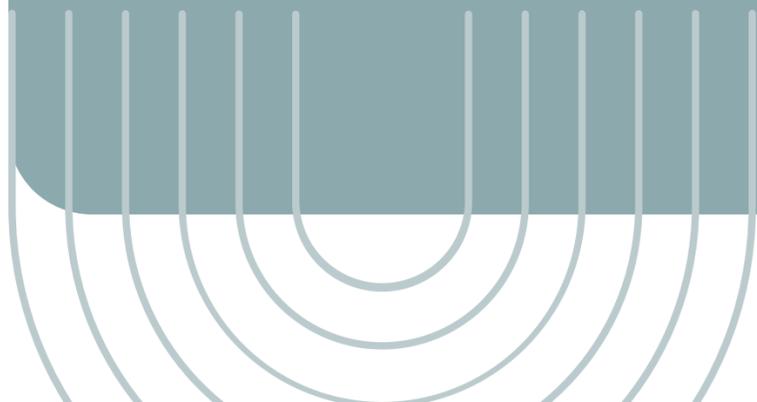
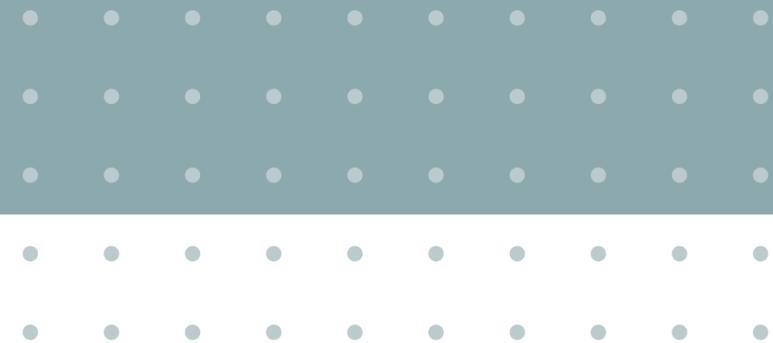
ONE TAKEAWAY:

IDEA's statutory text and interpretations neither mention nor especially emphasize the term "fidelity" as a legal requirement or defined concept, but fidelity still may be important.

But because it is an undefined term, it is open to interpretation and, unfortunately, to manipulation as a legal concept and, increasingly, a litigation tactic.



A LEGAL INTERPRETATION, AND SOME PUSHBACK



"WITH FIDELITY," & THE IEP AS LEGAL DOCUMENT

IS THE IEP A "LEGAL DOCUMENT"?

YES, IN A SENSE

The IEP (and, if included in the IEP, the BIP) comprise legal document(s) in the sense that there is Federal law, the IDEA, which mandates the creation and implementation of an IEP for each qualifying student who is in need of special education/specially designed instruction.

BUT THE IEP IS, MOST IMPORANTLY, AN EDUCATIONAL DOCUMENT

The IEP serves as the central mechanism through which special education services are tailored to meet the unique needs of disabled students. It is a tool, not a trap. And the focus should always be on what the student needs.

“THE INDIVIDUAL EDUCATION PLAN (IEP) IS THE MEANS BY WHICH SPECIAL EDUCATION AND RELATED SERVICES ARE TAILORED TO THE UNIQUE NEEDS OF A PARTICULAR CHILD” *ENDREW F. EX REL. JOSEPH F. V. DOUGLAS COUNTY SCHOOL DIST. RE-1, 580 U.S. 386 (2017).*



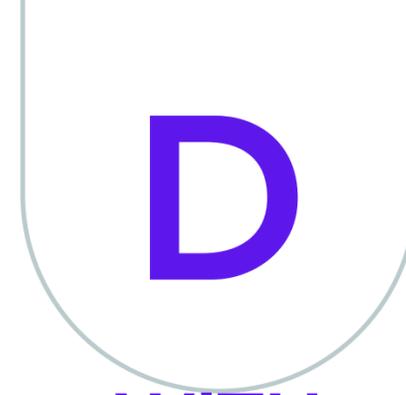


INDIVIDUALS

Impress upon your staff that the goal is not to avoid litigation, but to serve the student.

Educating the child is the goal and the reason for the IEP's existence.

EDUCATION



WITH DISABILITIES

Don't forget that there may be disagreements among the Team about how best to create the IEP. And, there may end up being differing interpretations of how it should be implemented, but staff should follow the IEP as it is written and meet, communicate, reach out, facilitate, mediate when there is disagreement about how to implement it.

Act in good faith in communicating with parents, advocates, and their attorneys if they are invited to Team meetings. They speak for the child.

ACT



WAYS TO STAY IN TOUCH

OUR FIRM

Please contact the presenter with any comments about the materials in this presentation, or any general education-related questions, or look our firm up on LinkedIn:
<https://www.linkedin.com/company/anderson-julian-hull-llp/>

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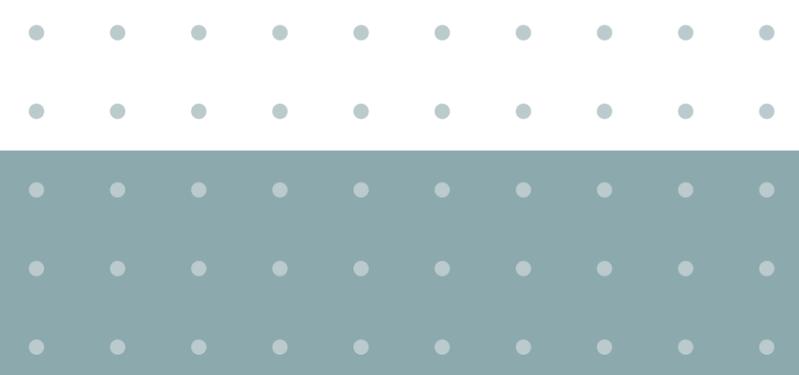
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THANK YOU

Do you have any question?

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