

# Bullying, Restraint and Seclusion

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## Bullying



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## Bullying Defined under State Law

- ❑ 13-32-15 SDCL. Bullying is a pattern of *repeated conduct* that causes physical hurt or psychological distress on one or more students that may include threats, intimidation, stalking as defined in chapter 22-19A, physical violence, theft, destruction of property, any threatening use of data or computer software, written or verbal communication, or conduct directed against a student that:
  - (1) Places a student in reasonable fear of harm to his or her person or damage to his or her property; and either;
  - (2) Substantially interferes with a student's educational performance; or
  - (3) Substantially disrupts the orderly operation of a school.



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## Discriminatory Harassment under Federal Law

- ❑ What schools call “bullying” is often also “discriminatory harassment” that violates federal law.
- ❑ Discriminatory Harassment violates federal law.
- ❑ OCR has jurisdiction over claims of discriminatory harassment based on:
  - ❑ Race;
  - ❑ Color;
  - ❑ National origin;
  - ❑ Sex; and
  - ❑ Disability.
- ❑ Our focus today is on disability-based harassment or bullying.



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## Elements of Disability-Based Harassment

- ❑ Elements:
  - ❑ Student is bullied based on a disability;
  - ❑ The bullying is sufficiently serious to create a hostile environment;
  - ❑ School officials know or should know about the bullying; and
  - ❑ The school does not respond appropriately.
- ❑ See OCR *Dear Colleague Letter* (October 21, 2014); OSERS *Dear Colleague Letter* (August 20, 2013); OCR *Dear Colleague Letter* (October 26, 2010); OCR and OSERS *Joint Guidance Letter* (July 25, 2000).



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## Response to Disability-Based Harassment

- ❑ “By limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment.” (OCR DCL 2010)
- ❑ Translation: Anti-bullying policies are good; but they are only a start.
- ❑ Schools must do more than just impose discipline on the bully.



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## How Bad Does It Have to Be?

- ❑ Under Federal Law: "Harassment creates a hostile environment when the conduct is *sufficiently severe, pervasive or persistent* so as to *interfere* with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by a school." (OCR DCL 2010)
- ❑ Under South Dakota's Bullying Law: "Bullying is a *pattern of repeated conduct* that causes physical hurt or psychological distress on one or more students ...that:
  - (1) Places a student in reasonable fear of harm to his or her person or damage to his or her property; and either
  - (2) *Substantially interferes* with a student's educational performance; or
  - (3) Substantially disrupts the orderly operation of a school." (13-32-15 SDCL)



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## What to Do?

- ❑ Under both federal and State law, you must develop and implement clear policies to address bullying. (OSERS DCL 2013; 13-32-16 SDCL 2012)
- ❑ Your policy must include "a procedure for the prompt investigation and response to any report of bullying...." (13-32-16(4) SDCL 2012)
- ❑ You must "take immediate and appropriate action to investigate or otherwise determine what occurred." (OCR DCL 2014)
- ❑ This investigation must be "prompt, thorough, and impartial." (OCR DCL 2010)
- ❑ Your policy must include consequences for bullying. (13-32-16(3) SDCL 2012)



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## What to Do: the Victim?

- ❑ You must “take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.” (OCR DCL 2014)
- ❑ This is the case “regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.” (OCR DCL 2010)
- ❑ “In addition to addressing the bullying under the school’s anti-bullying policies, schools should promptly convene the IEP team or Section 504 team to determine whether FAPE is being provided to a student with a disability who has been bullied and who is experiencing any adverse changes in academic performance or behavior.” (OCR DCL 2014)



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## Addressing Potential Impact on FAPE

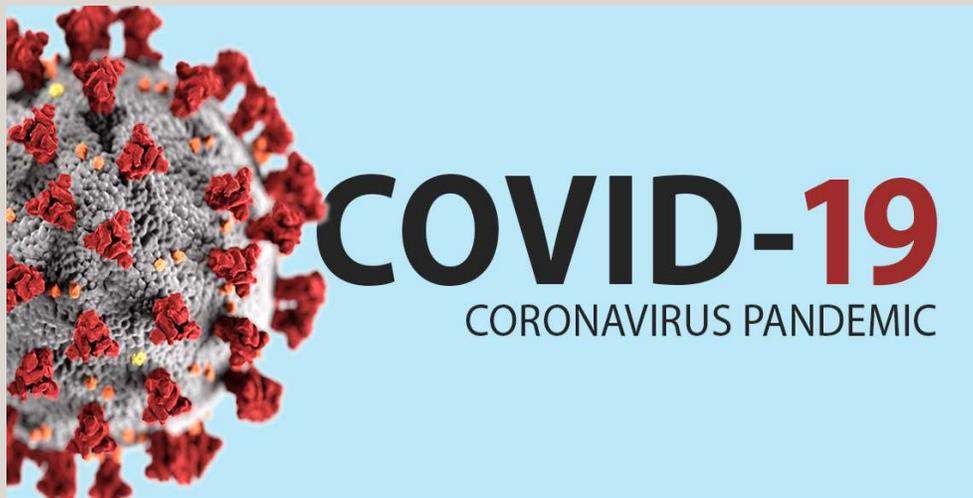
- ❑ Promptly convene the IEP team or the Section 504 team to determine whether, and to what extent:
  - ❑ the student's educational needs have changed;
  - ❑ the bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and
  - ❑ additional or different services, if any, are needed, and to ensure any needed changes are made promptly.

(OCR DCL 2014)



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**These are not ordinary times ... we are in the midst of a pandemic**



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## **Don't Forget Cyber-Bullying under State Law**

- ❑ 13-32-18 SDCL. Neither the physical location nor the time of day of any incident involving the use of computers or other electronic devices is a defense to any disciplinary action taken by a school district for conduct determined to meet the definition of bullying in § 13-32-15.



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## Restraint and Seclusion



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## Restraint: What does Federal Law Say?

- Federal law does not address this issue. There have been numerous efforts to pass federal legislation on the subject, but none have succeeded.
- State law controls.
- Educators who violate state law on the use of restraint do so at great personal risk.
- Know your state law.
- Follow it.



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## Restraint: What does State Law Say?

- ❑ The school board of each school district shall adopt or revise a school district policy for school district employees on the use of restraint and seclusion. The policy shall contain the following provisions:
  - (1) A procedure for notifying the parent or guardian of the student, unless the student is emancipated, of an incident requiring the use of restraint or seclusion;
  - (2) A prohibition on the use of prone restraint, defined as physical pressure applied to any part of the student's body to keep the student in a face down position on the floor or other surface, except when the use is necessary and reasonable in manner and moderate in degree; and
  - (3) A prohibition on the use of involuntary confinement of a student locked alone in a room, unless there is a clear and present danger.

13-23-20 SDCL.



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## What to Look for in State Law or Consider in Policy

- ❑ How are restraint and seclusion defined?
- ❑ When is it permitted?
- ❑ Are there limitations?
- ❑ Who is permitted to do it?
- ❑ Are there training requirements?
- ❑ Is notice to parents required?
- ❑ Are there documentation requirements?



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## How should the IEP Team Address?

- ❑ Parent requests a BIP that prohibits restraint and seclusion.
  - A. Agree with the request. Put a prohibition in the BIP.
  - B. Disagree. Say nothing in the BIP about this.
  - C. Put limiting language in the BIP in an effort to address parental concerns, but still permit restraint and seclusion under certain circumstances.



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## How should the Principal Respond?

- ❑ Student has a BIP that says nothing about restraint. School officials restrain the student. Parent claims that this is a violation of the law because restraint was not authorized by the BIP. Agree with the request. Put a prohibition in the BIP.
  - A. Apologize. Make amends and seek an addition to the BIP in case restraint is needed in the future.
  - B. Inform the parent that restraint is authorized by state law and the student code of conduct and does not have to be authorized by the BIP or the IEP.



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## The Risks of Addressing Restraint or Seclusion in a BIP

- Unless state law or local policy requires it, the better practice is not to address restraint in a BIP.
- It's already authorized by law.
- It's not a "positive behavior support or strategy."
- You can never predict when it might be needed.
- It might be necessary to restrain a student to protect the student from someone else.



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## Let's Look at Some Cases

- Spring Branch ISD v. O.W.*
- G.R. v. Del Mar Union School District*
- E.C. v. USD 385 Andover*
- McCarthy v. Scottsdale USD No. 48*
- Bradyn S. v. Waxhachie ISD*
- Kimes v. Matayoshi*
- A.T. v. Baldo*



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## ***Spring Branch ISD v. O.W., 76 IDELR 234 (5th Cir. 2020)***

- ❑ Background Facts:
  - ❑ This case involved a fifth-grade student with Emotional Disturbance.
  - ❑ "O.W.'s disciplinary records show that he was physically restrained eight times and that each instance of restraint was preceded by violent behavior by O.W. and attempts by district staff to utilize at least some of the strategies enumerated in the IEP."
  - ❑ "In each instance, the school determined the restraint was necessary to prevent serious physical harm to O.W. or to another."
- ❑ The district court and the hearing officer found the use of physical restraints "violated the IEP's framework for behavioral interventions, which required that staff use a calm style, minimize verbal interactions, avoid power struggles, and provide access to a cooling off period."



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## ***Spring Branch ISD v. O.W., 76 IDELR 234 (5th Cir. 2020)***

- ❑ Fifth Circuit held that "the law contains no provision requiring that the use of physical restraint be expressly authorized by a student's IEP."
- ❑ "Therefore, so long as the School District's use of physical restraints complied with state law, the use of restraints did not violate the IEP."
- ❑ In discussing the IEP, the Fifth Circuit observed:
  - ❑ "Nothing in the IEP suggests the LEA was required to follow every strategy in every instance."
  - ❑ "More important, nothing in the listed strategies suggests the techniques were intended to apply in the specific situation governed by the emergency restraint provision--when there is an imminent threat of serious harm."



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## ***Spring Branch ISD v. O.W., 76 IDELR 234 (5th Cir. 2020)***

- ❑ Comments on the case:
  - ❑ Parents who ask for a prohibition of restraint are making that request for a good reason.
  - ❑ Many times this request comes from foster parents on behalf of students who have been abused by authority figures in the past. It makes sense that parents would make this request.
  - ❑ Try to assure the parents that the school will comply with state law on this subject. Review the law with the parents. Make sure they understand that restraint is available in very limited circumstances.



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## ***G.R. v. Del Mar Union School District, 76 IDELR 152 (S.D. Cal. 2020)***

- ❑ Background: This case involved a 12-year-old with extreme anxiety and autism.
- ❑ Federal court in California denied parent request for residential placement, upholding the hearing officer decision affirming the school district's placement of the student in a "therapeutic and behavioral public school."
- ❑ Hearing officer conducted a nine-day hearing and wrote a 66-page decision.
- ❑ Courts are likely to defer to the hearing officer in situations like that. Not certain to do so....but likely.



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## ***G.R. v. Del Mar Union School District, 76 IDELR 152 (S.D. Cal. 2020)***

- ❑ The court denied residential placement despite 45 instances of restraint over a four-month period.
- ❑ Teachers testified that despite this, the student made progress.
- ❑ Hearing officer concluded:
  - ❑ Student made progress on some of his IEP goals.
  - ❑ He had increased participation in counseling and other related services, and increased participation in his classes.
  - ❑ He progressed academically.
- ❑ In contrast, at the RTC where the parents placed Student, he was restrained over 40 times, and his behavior “continued unabated, and he made no process academically, socially, or behaviorally.”



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## ***G.R. v. Del Mar Union School District, 76 IDELR 152 (S.D. Cal. 2020)***

- ❑ Although the parents lost on their claim for residential placement, the parents were awarded reimbursement for their private assessment and 80 hours of compensatory education services.
- ❑ Comments on the case:
  - ❑ Using restraint that often is an indicator that your BIP is not working as well as we would like.
  - ❑ We think that qualifies as an understatement.
  - ❑ Make some changes. Try something different. Gather more evaluation data. Don't just continue doing the same old same old when you have an indicator like this.



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## ***E.C. v. USD 385 Andover, 74 IDELR 129 (D.C. Kan. 2019)***

- ❑ This case involved an 11 year-old student with autism.
- ❑ The parent brought this suit alleging discrimination against Student by repeatedly restraining and secluding Student "in response to his disruptive -- and oftentimes violent -- conduct."
- ❑ Federal Court in Kansas held:
  - ❑ Restraint and seclusion can be used to address behaviors that directly arise from the disability.
  - ❑ "So long as the action is not taken by reason of the student's disability," this is not a form of disability discrimination.
  - ❑ The school is not required to conduct a manifestation determination.



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## ***E.C. v. USD 385 Andover, 74 IDELR 129 (D.C. Kan. 2019)***

- ❑ Comments on the case:
  - ❑ If you think about it for 30 seconds, it is obvious that restraint may be used in connection with behaviors that are a manifestation of disability.
  - ❑ The law does not require an MDR either before or after restraint is used.
  - ❑ However, remember that the use of restraint always is a sign that things are not going as we would like.
    - ❑ You don't have to do an MDR, but you ought to talk about it.
    - ❑ What can we do to prevent or limit this in the future?



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## ***McCarthy v. Scottsdale USD No. 48, 75 IDELR 10 (D.C. Ariz., 2019)***

- ❑ Federal court in Arizona held that claims of improper restraint must go through administrative proceedings before going to court.
- ❑ The term is “exhaustion of administrative remedies.”
- ❑ That’s of more interest to the lawyers than the educators.



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## ***Bradyn S. v. Waxhachie ISD, 75 IDELR 37 (N.D. Tex. 2019)***

- ❑ This case involved an 8 year-old student with autism and a speech impairment.
- ❑ Parents alleged that the principal violated Student’s Fourth Amendment Constitutional right against excessive force when the principal assisted law enforcement in restraining Student.
- ❑ In dismissing the claim, the court held: “In the present case, prior to his restraint, Bradyn S. engaged in four separate behavioral incidents before continuing to attack students and staff, leading Kazda to evacuate his classroom. [] Considering these circumstances, the court concludes that Kazda's ‘participation’ in the restraining of Bradyn S. without any specificity regarding the extent and nature of her participation was not clearly excessive to the need to manage Bradyn S.'s behavior at the time.”



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## ***Bradyn S. v. Waxhachie ISD, 75 IDELR 37 (N.D. Tex. 2019)***

- ❑ Comments on the case:
  - ❑ Federal court in Texas notes the obvious – It can't be excessive force if there is no evidence of any force.
  - ❑ Also note the deference to educators: "preservation of order in the schools allows for closer supervision and control of school children than would otherwise be permitted under the Fourth Amendment."



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## ***Kimes v. Matayoshi, 75 IDELR 121 (9th Cir. 2019)***

- ❑ This case alleged disability discrimination and sought money damages due to staff having physically restrained a student with autism.
- ❑ To obtain an award of money damages, the parents had to prove deliberate indifference.
- ❑ The jury found insufficient evidence of deliberate indifference.
- ❑ Parent appealed.
- ❑ Ninth Circuit upheld the jury verdict.



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## ***Kimes v. Matayoshi*, 75 IDELR 121 (9th Cir. 2019)**

- ❑ Ninth Circuit observed: “Several witnesses testified that this decision responded to R.K.’s verbal and physical threats to kill herself and occurred after half an hour of attempted de-escalation. The jury could reasonably have concluded that school officials decided to restrain R.K. to protect her, and thus meant to further her right to safe education, not hinder it.”
- ❑ Comments on the case:
  - ❑ Deliberate indifference is a legal standard courts often apply when assessing liability.
  - ❑ It is not a phrase that should ever be used in the school building. Let the lawyers defend you on this basis, if necessary. Parents expect much more than the absence of “deliberate indifference.”



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## ***A.T. v. Baldo*, 75 IDELR 210 (9th Cir. 2019)**

- ❑ Ninth Circuit granted “qualified immunity” to educators who were sued personally over allegedly excessive restraint (112 times, and 2,719 minutes in isolation over a three-year period).
- ❑ Ninth Circuit held:
  - ❑ The educators were entitled to qualified immunity if they did not violate clearly established statutory or constitutional rights.
  - ❑ The educators did not violate “clearly established” legal standards.
  - ❑ “In all cases in this area where Fourth Amendment violations have been found, the teacher or school official’s actions clearly fell under the rubric of ‘arbitrary and excessive corporal punishment.’”
  - ❑ There are “no specific federal laws concerning the use of seclusion and restraint in public schools.”



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## ***A.T. v. Baldo, 75 IDELR 210 (9th Cir. 2019)***

- ❑ Comments on the case:
  - ❑ The issue here was only Fourth Amendment liability. A suit alleging a material failure to implement the IEP may fare better.
  - ❑ Moreover, the educators are accused of violating the IEP and state guidelines. If that's true, there should be some consequences for that from the school district.



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## **A Return to the Fundamentals**



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## Special Education-Where Does It Come From?

- ❑ The laws that govern your special education program are almost entirely based in federal law.
- ❑ The primary federal law is the Individuals with Disabilities Education Act (IDEA).
- ❑ Also at play are the federal laws that prohibit discrimination based on disability:
  - ❑ Section 504 of the Rehabilitation Act; and
  - ❑ Americans with Disabilities Act.



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## Rules, Rules, Rules

- ❑ Legal requirements regarding special education services are voluminous and detailed.



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## The Basics

- IDEA has a “zero reject” philosophy (all means all).
- The law requires us to expand our definition of what “education” means.
- Decisions must be individualized, based on the needs of the particular student.
- Decisions must be based on evaluation data.



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## The Basics

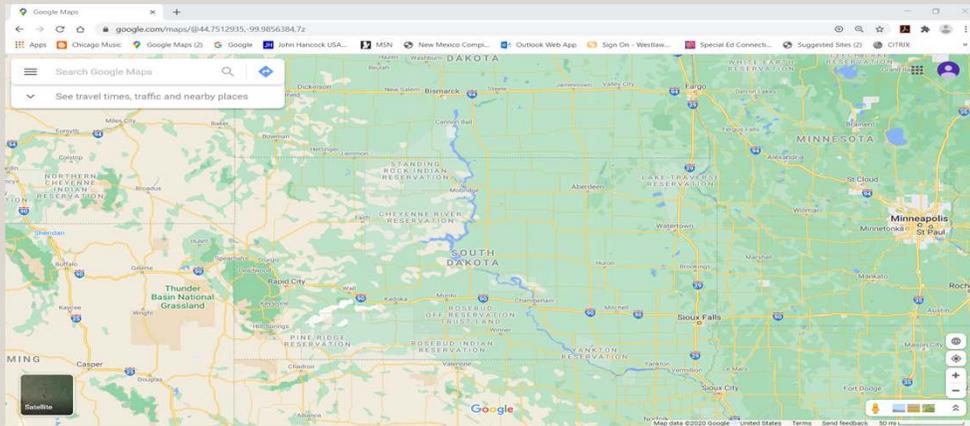
- Each student has an IEP Team.
- The IEP Team develops an Individualized Education Program for the student.



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## The Basics

- ❑ The IEP is a road map.



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## There are Special Factors the IEP Team must Consider

- ❑ The IEP Team must— “In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior....” 34 C.F.R. § 300.324(a)(2)(i).
- ❑ “This requirement applies to all IEP Teams, regardless of the child’s specific disability, and to the development, review, and revision of IEPs.” *DCL Letter*, OSERS (August 2014).



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## The IEP must be Designed to Confer a Free Appropriate Public Education (FAPE)

- "General. A free appropriate public education 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 § 300.530(d)."

34 C.F.R. § 300.101(a).



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## What is a Free Appropriate Public Education?

FAPE

ROWLEY → ENDREW



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## **Andrew F. v. Douglas County School District RE 1, 71 IDELR 144 (D.C. Colo. 2018)**

- ❑ *Andrew after Andrew.*



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## **Background**

- ❑ Andrew was diagnosed with autism at age 2.
- ❑ He attended school in Douglas County School District from preschool through fourth grade. He received a new IEP each year that addressed both “educational and functional needs.”
- ❑ Andrew’s parents believed his academic and functional progress had “essentially stalled.”
- ❑ In the parents’ view, the proposed IEP was “pretty much the same as his past ones” – so they pulled Andrew out of school and placed him privately at “Firefly Autism House,” a private school specializing in the education of students with autism.
- ❑ Andrew’s parents requested a DPH and sought reimbursement for the Firefly placement.



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## Court History

- ❑ The parents lost the due process hearing, lost before the Federal District Court, and lost before the Tenth Circuit Court of Appeals.
- ❑ The court reasoned that even though Endrew had not demonstrated “immense educational growth,” he had shown a pattern of “at the least, minimal progress.” The Tenth Circuit Standard was that an IEP must confer an educational benefit that is “more than *de minimus*.” Under this standard, Endrew received a FAPE.
- ❑ In 2017, the Supreme Court handed down a unanimous decision rejecting the Tenth Circuit standard, and remanding back to the district court for application of the standard articulated by the Supreme Court.



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## The Supreme Court (2017)

- ❑ Outlined what “Free Appropriate Public Education” means for students who are not expected to perform at grade level.
- ❑ IEP is to be:
  - ❑ “Appropriately ambitious,”
  - ❑ Include “challenging objectives,”
  - ❑ “Individually crafted,” and
  - ❑ “Reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”
- ❑ IEP members must be prepared to give a “cogent and responsive explanation” of their proposed programs and services in every IEP.



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## The District Court's Decision Following Remand

- ❑ The court held that the IEP offered by the district did not satisfy the standard.
- ❑ In part this was based on the failure of the district to have in place a behavior plan designed to reduce the adverse effect of inappropriate behaviors.



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## Lessons Learned

- ❑ Remember the procedural history of this case: The parents lost the due process hearing, lost before the Federal District Court, and lost before the Tenth Circuit Court of Appeals.
- ❑ Regardless of the fact that the *Rowley* decision was not overruled, as a practical matter, the Supreme Court's decision in *Endrew F.* ushered in a new era.
- ❑ Parents won at the Supreme Court and won on remand.



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## Lessons Learned

- ❑ When developing an IEP for a child who cannot reasonably be expected to master the general curriculum and advance from grade to grade:
  - ❑ The IEP Team must have a good understanding of the student's present levels.
  - ❑ The IEP Team must have a good understanding of the student's individual needs and capacity for growth (unique circumstances).
  - ❑ The IEP Team must develop an IEP that is appropriately ambitious in light of the child's unique circumstances.
  - ❑ The IEP need not be ideal, but must be reasonable.



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## The Basics

- ❑ The school must ensure parent participation in the IEP meeting including:
  - ❑ By their attendance; and
  - ❑ By their meaningful involvement in the decision-making process.



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## ***E.S. v. Cornejo Valley Unified Sch. Dist., 72 IDELR 180 (C.D. Cal. 2018)***



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## **Background**

- ❑ This case involved a first grade student with Emotional Disturbance and Other Health Impairment due to ADHD.
- ❑ E.S. received behavioral interventions from the time he was two yrs. old.
- ❑ He had a one-to-one aide when he was three, along with an “adult shadow” for after school.
- ❑ In preschool, E.S. exhibited pervasive behavioral problems.
- ❑ Parent did not disclose previous behavior issues on kindergarten enrollment forms because she did not want the school to “label” him.



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## Background

- ❑ Day before first day of Kindergarten, parent told principal about the behavior and mental health history including his “hitting, punching, kicking, [and] pushing.”
- ❑ E.S. was seeing a psychiatrist because mom and dad “couldn’t control him anymore.”
- ❑ Principal notified the classroom teacher and set up a SAT.
- ❑ Two weeks into school, the SAT team met:
  - ❑ Team discussed “Hitting, kicking and drawing on another student arm” and distractibility; and
  - ❑ Team referred to school counselor to provide additional tools.



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## Background

- ❑ SAT met again in October:
  - ❑ Behavior “better in terms of contact” but his “new behavior is spitting in faces” while waiting in line.
  - ❑ Placed in a general education social skills communication group with an SLP and referred to the counselor.
- ❑ SAT met again in February:
  - ❑ Parent requested assessment for special education;
  - ❑ Behaviors of impulsivity and aggression had increased; and
  - ❑ E.S. had been recently diagnosed with conduct disorder, mood disorder and mood dysregulation disorder by a private psychiatrist.



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## Background

- ❑ The Initial evaluation was completed on April 25, 2016.
- ❑ MDT: ED, OHI eligibility.
- ❑ IEP proposed 30 minutes weekly of specialized academic instruction, 60 minutes weekly of individual counseling, 240 minutes monthly of speech and language therapy, 300 minutes yearly of behavior intervention services, and 90 minutes daily of intensive individualized services.
- ❑ Parent did not consent to the IEP because it did not include a “full-time one-on-one behaviorist aide from a certified non-public agency.”



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## Background

- ❑ On the same day as the Initial IEP, the team proposed a follow-up assessment plan to evaluate the student’s need for intense social emotional services, OT, increased aide support, and an FBA.
- ❑ There was a delay in assessment due to the parent not affirming the 2<sup>nd</sup> assessment plan.
- ❑ As a result of the assessment, it was recommended:
  - ❑ E.S. to continue behavior interventions from April IEP; and
  - ❑ No BIP necessary.



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## Background

- ❑ Parent filed DPH alleging the District denied FAPE, in part, due to an alleged failure to timely assess the student in all areas of suspected disability and conduct an FBA.
- ❑ The due process hearing officer agreed, but found the error harmless because the IEP was appropriate and the child received a FAPE.
- ❑ The parent appealed to district court.
- ❑ The district court reversed, finding that the error was not harmless.



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## What types of procedural errors matter?

- ❑ In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—
  - (i) Impeded the child's right to a FAPE;
  - (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
  - (iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513(a)(2)



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## Key Quotes

- ❑ "Under the IDEA, the school district must conduct a 'full and individual initial evaluation,' one which ensures that the child is assessed in 'all areas of suspected disability,' before providing that child with any special education services."
- ❑ "[T]his requirement serves a critical purpose: it allows the child's IEP Team to have a complete picture of the child's functional, developmental, and academic needs, which in turn allows the team to design an individualized and appropriate educational plan tailored to the needs of the individual child."
- ❑ "If District had included a functional behavior assessment in the battery of assessments it administered to Student in spring 2016, the IEP team would likely have had valuable information about Student's behavior patterns and antecedents to his aggressive behaviors."



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## Key Quotes

- ❑ "The absence of results, findings and recommendations from a functional behavior assessment at the April 2016 IEP meeting impeded Parents' opportunity to participate in the decision making process regarding the provision of FAPE to Student."
- ❑ "Because the procedural' [error] 'significantly infringe[d] on the parents' opportunity to participate in the IEP formulation process," . . . the court concludes that the error was not harmless."
- ❑ The court ordered 106 hours of compensatory services and reimbursement for the parents' private psychiatric evaluation.
- ❑ Subsequently, the parents were awarded \$399,011 in attorney's fees.



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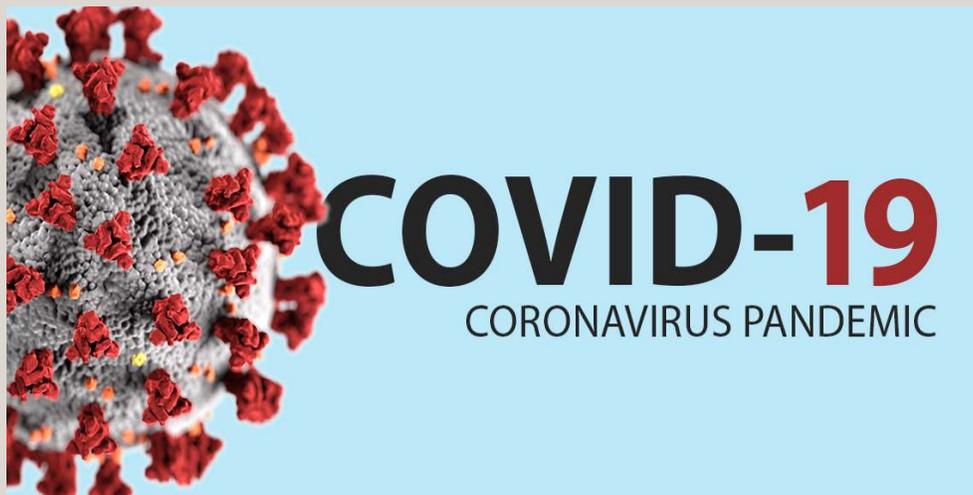
## Lesson Learned

- ❑ Ensure your evaluation team evaluates in all areas of suspected disability, including by conducting an FBA when indicated.
- ❑ FBAs provide valuable information to the IEP Team about a student's behavior patterns and possible reasons for the behavior, enabling the IEP Team to develop an appropriate IEP.
- ❑ The failure to conduct an FBA is a procedural error in that it interfered with the parents' ability to be informed, and thus, to fully participate in the development of their child's IEP.



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**These are not ordinary times ... we are in the midst of a pandemic**



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## MASKS



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## MASKS

- ❑ Even if not related to a disability, if students are required to wear masks, the refusal to wear a mask is a behavior that interferes with learning. IEP Team should address including through a BIP, as appropriate.
- ❑ Strategies to help children become more comfortable with wearing a mask:
  - ❑ Work with parents and related services providers to assist in de-sensitizing the student in the use of the masks.
  - ❑ Show children pictures of other children wearing masks.
  - ❑ Draw a mask on a favorite book character.
  - ❑ Discuss how masks help keep everyone healthy.
  - ❑ Create social stories.
  - ❑ Practice wearing a mask for short periods of time.
  - ❑ Address through positive behavioral interventions and supports as part of a BIP.



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