

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

WHAT DOES THE IDEA HAVE TO SAY ABOUT ATTENDANCE?

ATTENDANCE AND FAPE

- **Child Find**
- **Eligibility**
- **IEP Design and Behavior Considerations**
- **IEP Implementation Issues**
- **Retaliation Issues**
- **Top Ten Tips!**

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

What does the IDEA
have to say about
attendance?

- Child Find and Attendance

CHILD FIND GENERALLY

- The IDEA requires that districts identify, locate, and evaluate all children with disabilities residing within the jurisdiction that either have, or are suspected of having, disabilities and need special education as a result of those disabilities. 34 CFR 300.111(a).

CHILD FIND GENERALLY

- Search out and find – active not passive.
- Educate staff on signs that student might have a disability.
- Playground supervisors, teachers, principals, parents – anyone could be a source of information.
- Be alert but not paranoid.
- Remember Section 504 as an option.

CHILD FIND GENERALLY

DeMarcus L. v. Board of Education of the City of Chicago District 299 (N.D. Ill. 2014). Finding that an Illinois district had no reason to believe an 8-year-old boy with behavioral problems might have an IDEA-eligible disability until it suspended him twice in a two-week period, the District Court found that the district's attempt to manage the child's behaviors with classroom interventions was not unreasonable.

The court held a parent seeking relief for a child find violation must show that the district: 1) overlooked clear signs of disability and negligently failed to order an evaluation; or 2) had no rational justification for its decision not to evaluate the student.

CHILD FIND GENERALLY

Jana K. v. Annville Cleona School District (M.D. Pa. 2014):

- A parent's failure to notify a Pennsylvania district that a physician had diagnosed his teenage daughter with depression did not let the district off the hook for failing to conduct an IDEA evaluation. The District Court held that the district's knowledge of the student's declining grades, frequent visits to the school nurse, and acts of self-harm were sufficient to trigger the district's child find duty.

CHILD FIND AND ATTENDANCE

Although the outcomes of cases involving child find and truant students vary widely, a district's child find obligation may be triggered where there are significant absences, a reason to believe the absences are linked to a disability, and a need for services.

CHILD FIND AND ATTENDANCE

Department of Education, State of Hawaii v. Cari Rae S., 35 IDELR 90 (D. Hawaii 2001): The court held that the student’s 159 absences, numerous behavioral referrals, and failing grades should have triggered referral during the student’s sophomore year. The decision noted that the threshold for “suspicion” is relatively low, and that the inquiry was not whether or not she actually *qualified* for services, but rather, was whether she should be *referred* for an evaluation.

CHILD FIND AND ATTENDANCE

Hilliard City Sch. Dist., 60 IDELR 58 (SEA OH 2012): The State Dept of Ed concluded that the district violated child find where a private evaluation reports clearly linked the student’s attendance problems with disabilities. The student was performing below grade level and the school attributed the problem to his failure to attend school. However, the school did not refer him for an evaluation even after his parent provided reports from a private psychologist and psychiatrist stating that the student’s mental impairments prevented him from attending school.

CHILD FIND AND ATTENDANCE

Broward County (FL) Sch. Dist., 61 IDELR 265 (OCR 2013): OCR found that because the school failed to evaluate two oft-absent kindergartners within a reasonable period after learning that they were being treated for bipolar disorder, it violated its child find duty under Section 504. The students both missed numerous school days for four consecutive years, including during the 2011-12 school year when each student was absent more than 30 days. According to the parent, the students' medications caused nausea and tiredness, which impacted the students' ability to attend school. OCR noted that a district must conduct an evaluation within a reasonable period of time after a district has reason to suspect that a student, because of a disability, may need special education or related services.

CHILD FIND AND ATTENDANCE

Where a court or hearing officer views the truancy as the result of social maladjustment, or family or social circumstances, they are more likely to conclude that the district had no duty to refer the student for a special education evaluation.

See W.G. and M.G. v. New York City Dep't of Educ., 56 IDELR 260 (S.D.N.Y. 2011): (ruling that the student's behaviors, which included truancy, defiance, and refusing to learn, were the result of social maladjustment, not depression).

CHILD FIND AND ATTENDANCE

- *What systems do you have in place to consider a potential referral for an evaluation when students have significant attendance issues?*
- *Including considering Section 504?*

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

What does the IDEA
have to say about
attendance?

- Attendance Impacts on Eligibility Decisions

ELIGIBILITY AND ATTENDANCE

Lack of attendance, on its own, does not qualify a student for special education.

However, it may help establish that the student has an impairment that results in an adverse effect on educational performance and/or a need for special education and related services, elements required to establish eligibility under the IDEA.

ELIGIBILITY AND ATTENDANCE

Carefully consider the impact of attendance on the adverse effects noted and never assume a student's absences are unrelated to a disability.

For example, a student's absences could stem from severe anxiety related to an emotional disturbance or from a health condition that qualifies as an other health impairment.

ELIGIBILITY AND ATTENDANCE

Independent Sch. Dist. No. 283 v. E.M.D.H., 74 IDELR 19 (D. Minn. 2019), aff'd in part, rev'd in part, 76 IDELR 203 (8th Cir. 2020): (finding that because a high schooler's anxiety and depression prevented her attending school and accessing her educational program, the district erred in finding her ineligible for IDEA services).

ELIGIBILITY AND ATTENDANCE

Independent Sch. Dist. No. 283 v. E.M.D.H., 74 IDELR 19 (D. Minn. 2019), aff'd in part, rev'd in part, 76 IDELR 203 (8th Cir. 2020):

“For years the Student has suffered from a panoply of mental-health issues that have kept her in her bedroom, socially isolated, and terrified to attend school,” the 8th Circuit wrote. Although the district argued that the student did not have a disability-related need for special education, as evidence by her above-average standardized test scores and exceptional performance on the rare days she attended school, the 8th Circuit disagreed and pointed out that the IDEA does not focus on a student's innate intelligence, but rather on the student's ability to progress in the general education curriculum.

ELIGIBILITY AND ATTENDANCE

**Independent Sch. Dist. No. 283 v. E.M.D.H., 74 IDELR 19 (D. Minn. 2019),
aff'd in part, rev'd in part, 76 IDELR 203 (8th Cir. 2020):**

“The Student was absent from the classroom not as a result of ‘bad choices’ causing her ‘to fail in school,’ for which the IDEA would provide no remedy, but rather as a consequence of her compromised mental health, a situation to which the IDEA applies.” The court found that she had an emotional disturbance (unable to build or maintain satisfactory interpersonal relationships with peers and teachers, which adversely affected her educational performance and resulted in a need for special education).

ELIGIBILITY AND ATTENDANCE

**Independent Sch. Dist. No. 283 v. E.M.D.H., 74 IDELR 19 (D. Minn. 2019),
aff'd in part, rev'd in part, 76 IDELR 203 (8th Cir. 2020):**

“The record demonstrates that the Student’s intellect alone was insufficient for her to progress academically and that she was in need of special education and related services,” Judge Erickson wrote. The 8th Circuit upheld the District Court’s ruling that the district violated the IDEA by delaying its initial evaluation of the student, failing to conduct an appropriate evaluation, and finding the student ineligible based on her academic ability. It reversed the District Court’s holding that the district had no obligation to pay for private tutoring.

ELIGIBILITY AND ATTENDANCE

So how did the court get there?

- ✓ ED Criteria: inability to build/maintain satisfactory interpersonal relationships (also could have used pervasive depression?)
- ✓ Adverse effect on educational performance?
- ✓ Need for special education?

ELIGIBILITY AND ATTENDANCE

Springer v. The Fairfax County School Board, 27 IDELR 367 (4th Cir. 1998): the 4th U.S. Circuit Court of Appeals held that a high school student did not meet the eligibility criteria for ED. The student's misbehavior, which included truancy, drug use, and theft, was not consistent with ED, but with his diagnosed social maladjustment.

ELIGIBILITY AND ATTENDANCE

As the IDEA regulation at 34 C.F.R. 300.8(c)(4)(ii) indicates, the fact that a student is socially maladjusted does not eliminate the possibility that she is eligible. The key is whether there is a genuine underlying emotional impairment that is causing or substantially contributing to the student's truancy.

ELIGIBILITY AND ATTENDANCE

Independent Sch. Dist. No. 284 v. A.C., 35 IDELR 59 (8th Cir. 2001): holding that the student's truancy resulted from a genuine case of ED rather than "a purely moral failing" – and that the student "will not receive educational benefit unless her emotional and behavioral problems are dealt with."

ELIGIBILITY AND ATTENDANCE

H.M. v. Weakley County Bd. of Educ., 65 IDELR 68 (W.D. Tenn. 2015): finding that a frequently truant high schooler’s “social maladjustment” did not excuse a Tennessee district’s failure to provide the student IDEA services to address her severe depression. This is a case where the student was found to be both socially maladjusted and emotionally disturbed.

ELIGIBILITY AND ATTENDANCE

Boulder Valley Sch. Dist., 69 IDELR 22 (SEA CO 2016): finding that a district’s overreliance on the student’s truancy caused it to ignore a student’s eligibility for special education services. In this case, while the data showed improvement after the student began attending more regularly, the decision reflected that the underlying needs were still present.

ELIGIBILITY AND ATTENDANCE

So when is attendance an exclusionary factor?

ELIGIBILITY AND ATTENDANCE

A child must not be determined to be a child with a disability if the determinant factor for that determination is:

- 1) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in Section 1208(3) of the Elementary and Secondary Education Act);
 - 2) Lack of appropriate instruction in math; or
 - 3) Limited English proficiency; and
- 34 CFR 300.306 (b).

ELIGIBILITY AND ATTENDANCE

noun: *determinant:* a factor which decisively affects the nature or outcome of something.

ELIGIBILITY AND ATTENDANCE

Accordingly, if the primary reason for underachievement or adverse effects on educational performance is a lack of instruction due to a lack of attendance, *particularly on an initial evaluation*, then the student is not an eligible student under the IDEA.

ELIGIBILITY AND ATTENDANCE

Carefully consider that balance between when attendance might be considered an inclusionary factor and when it might be an exclusionary factor.

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

What does the IDEA
have to say about
attendance?

- IEP Design Issues Related to Attendance

ATTENDANCE AS A FAPE ISSUE

- Is it evidence of unmet needs at school?
- Is it a behavior impeding learning?
- Is it a medical need?
- Does it impact placement?
- Is it caused by other factors (bullying)?

ATTENDANCE AS A FAPE ISSUE

Pocono Mountain School District, 114 LRP 23161(SEA PA 2014): A district that addressed a kindergartner’s absenteeism “early and often” established that it did not deny the child FAPE. A Pennsylvania hearing officer noted that the district responded to the student’s sporadic attendance in numerous ways, including by assigning an individual to monitor the student for seizure activity, developing a seizure action plan, and placing the student in a small-group setting.

ATTENDANCE AS A FAPE ISSUE

Pocono Mountain School District, 114 LRP 23161 (SEA PA 2014):

"[T]he record overwhelmingly proves that the District addressed Student's absenteeism early and often, demonstrating its determination to design its educational services specially for Student, in order to make school as safe and attractive as possible," the IHO wrote. The IHO noted that the district provided one-to-one monitoring and attendance services immediately after the parent kept the student home in September after just two days of school. The district also conducted a full psychoeducational evaluation and placed the student in an emotional support classroom. When the parent balked at a more inclusive placement, the district kept the student in the emotional support program to encourage the parent to bring the child to school. Finally, the IHO observed that the district amended the IEP several times to provide extra services to the student, including specially designed transportation, reduced school hours, and homebound services. "Taking these efforts into consideration, Parent's criticism of the District's efforts to address Student's absenteeism must fail,"

the IHO wrote.



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ATTENDANCE AS A FAPE ISSUE

Downingtown Area School District, 113 LRP 34703 (SEA PA 08/11/13): The parents alleged that the district denied the student FAPE because it referred them to a truancy judge without addressing the truancy through interventions. In rejecting the parents' claim, the impartial hearing officer noted that the district took a variety of steps to secure the student's attendance long before it filed truancy charges, including by developing multiple attendance plans, providing small-group therapy, and having the parents call the assistant principal when the student was refusing to leave home. Only after its varied efforts failed and the parents' cooperation waned did the district file a truancy petition.



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ATTENDANCE AS A FAPE ISSUE

For a student who is already eligible under the IDEA and whose truancy adversely affects learning, the duty to address the absences in the IEP may exist regardless of whether they stem from a disability. The IDEA regulations at 34 CFR 300.324(a)(2)(i) require a district, in the case of a child whose behavior impedes the child's learning or that of others, to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

ATTENDANCE AS A FAPE ISSUE

Huron Sch. Dist., 68 IDELR 178 (SEA SD 2016): Finding that a district should have acted much more quickly to address a teen's excessive absenteeism, the South Dakota ED ordered the district to obtain training for its staff members involved in drafting and implementing IEPs. Noting that the student's absenteeism interfered with the student's learning, the ED reasoned that the district should have addressed it as a behavioral issue. As of Jan. 3, 2016, the student had 19 unexcused absences and 40 tardies. The student's IEP noted the absences but lacked specific strategies to address them. In late February, the district reported the student's truancy to the state's attorney. The parents filed a complaint with the ED alleging that the student's IEP didn't meet the student's individual needs. While the ED found that the IEP adequately addressed the student's academic needs, it concluded that the program fell short when it came to dealing with the student's behavior (truancy).

ATTENDANCE AS A FAPE ISSUE

Huron Sch. Dist., 68 IDELR 178 (SEA SD 2016):

The ED observed, two months prior to the truancy referral, the IEP noted that the absenteeism was interfering the student's ability to benefit from his education. Moreover, by the time of the truancy referral, the student had accumulated 54 tardies and 28 absences. "It is clear that Student's truancy became a pattern of behavior that should have been addressed," the ED wrote. The ED acknowledged that the district started developing an FBA; however, it didn't do so until Jan. 14, 2016. And although the district began the process of creating a BIP, a BIP wasn't completed that school year. "The District's failure to timely address Student's behavioral needs and to timely develop and implement an IEP that addressed those needs" constituted a violation of the IDEA, the ED concluded.

ATTENDANCE AS A FAPE ISSUE

Garris v. District of Columbia, 68 IDELR 194 (D.D.C. 2016): The court found that a behavioral intervention plan including goals and strategies relating to attendance and strategies to address a student's truancy was proper under the IDEA. The judge pointed out that an FBA conducted in September 2014 noted the student's low frustration level and her highly inappropriate verbal interactions with peers and indicated that she acted out to get attention. The BIP addressed those behaviors by identifying a support person the student trusted, offering instruction in problem-solving techniques, calling for verbal encouragement and positive affirmation, and giving the student opportunities to express her feelings. It also included a goal relating to attendance and provided for counseling to explore the student's lack of educational motivation.

ATTENDANCE AS A FAPE ISSUE

Washington v. Katy Independent School District, 123 LRP 9795 (5th Cir. 2023): An IEP team's efforts to address a high schooler's lost credits and the roots of his absenteeism after he was tased by an SRO helped establish that the Texas district offered the student with ED and intellectual disability FAPE. The 5th Circuit rejected the student's mother's contention that the district failed to timely address the student's absences. After an SRO allegedly tased the student, the student's mother withdrew her son from school for the Spring term. The student continued to struggle with absenteeism the following Fall. The parent challenged a District Court's ruling that the district provided the student FAPE.

ATTENDANCE AS A FAPE ISSUE

Washington v. Katy Independent School District, 123 LRP 9795 (5th Cir. 2023): The court pointed out that the IEP team discussed attendance, attendance expectations, and the student's return. The team, the 5th Circuit remarked, also adjusted the student's BIP to address the underlying causes of his attendance problems, offered the student ESY services so that he could recoup lost credits, and recommended an FBA to determine further ways the district could support the student.

ATTENDANCE AS A FAPE ISSUE

At least one hearing officer's decision indicates that transferring a student to an alternative school on the basis of truancy could be a change of placement that triggers the duty to conduct a manifestation determination review. In *Rialto Unified School District*, 114 LRP 38495 (SEA CA 08/13/14), an administrative law judge ruled that the district was required to conduct an MDR because the transfer of the student, who was absent 35 days during the first two months of his enrollment, was based on a code of conduct violation.

ATTENDANCE AS A FAPE ISSUE

Homebound?

- ✓ Homebound instruction may be necessary for a student with a disability who is unable to attend school for medical or psychological reasons.
- ✓ Courts and hearing officers have consistently held that home placements based solely on parent preference are not appropriate.
- ✓ When a student is not attending school, has the team properly considered any medical need that may result in homebound instruction?

ATTENDANCE AS A FAPE ISSUE

When the reason for a parent seeking funding for a residential placement is the student's truancy, the case often turns on whether the judge or hearing officer views the truancy as an educational need that must be addressed in the IEP.

Edmonds Sch. Dist. v. A.T., 71 IDELR 31 (W.D. Wash. 2017), aff'd, 74 IDELR 218 (9th Cir. 2019, unpublished): (granting parent's reimbursement request for residential placement because the placement was needed to address both the student's medical needs and his truancy).

ATTENDANCE AS A FAPE ISSUE

When the reason for a parent seeking funding for a residential placement is the student's truancy, the case often turns on whether the judge or hearing officer views the truancy as an educational need that must be addressed in the IEP.

Board of Educ. of Montgomery County v. Brett Y., 28 IDELR 460 (4th Cir. 1998): (finding that the student's truancy was "unrelated to the learning process").

ATTENDANCE AS A FAPE ISSUE

- Schools have an obligation to ensure that a student with a disability who is the target of bullying continues to receive FAPE in accordance with his IEP or Section 504 plan.
- The school should, as part of its appropriate response to the bullying, convene the IEP or Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP or 504 plan is no longer designed to provide FAPE. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013); and *Dear Colleague Letter: Responding to Bullying of Students with Disabilities*, 64 IDELR 115 (OCR 2014).

ATTENDANCE AS A FAPE ISSUE

- Schools have an obligation to ensure that a student with a disability who is the target of bullying continues to receive FAPE in accordance with his IEP or Section 504 plan.
- ***If a student is not attending due to allegations of bullying, has the school properly responded and offered supportive measures?***

ATTENDANCE AS A FAPE ISSUE

What actually works to improve attendance?

ATTENDANCE AS A FAPE ISSUE

- **NASSP Strategies for Success:**
- Create a culture in which all teachers and staff purposefully develop relationships with students.
- For example, mentors create an ongoing positive effect as students realize that at least one adult really cares about them.

ATTENDANCE AS A FAPE ISSUE

- **NASSP Strategies for Success:**
- Monitor attendance and follow up on students with weak attendance.
- Be a “pleasant pest” who continually expresses concern for the student and emphasizes that good attendance is in the student’s best interest. Face-to-face and phone calls matter, not just emails!

ATTENDANCE AS A FAPE ISSUE

- **NASSP Strategies for Success:**
- Minimize obstacles to attendance. Maybe kids are avoiding bullies, are embarrassed about their clothes, need access to a shower, need child care, or have an issue with drugs. Perhaps they are struggling in class or experiencing conflict with a teacher.
- You must know the source of problems before you can solve them, so delve into the reasons for absences. If you have developed a positive relationship with kids, they are likely to tell you the reasons for their absences and welcome your intervention to help them.

ATTENDANCE AS A FAPE ISSUE

- **NASSP Strategies for Success:**
- Create opportunities for meaningful involvement. Athletes, as well as students who perform in band, chorus, theater, or virtually any other extracurricular activity, have a positive, meaningful connection to school. So, promote involvement in extracurricular activities.
- Not everyone can be an athlete, musician, or thespian. But a forward-thinking administrator might be able to help kids form a positive social circle and encourage them by finding them a role as a manager for a team, a stagehand, etc.

ATTENDANCE AS A FAPE ISSUE

- **NASSP Strategies for Success:**
- Consider alternatives to suspension. Schools should carefully consider the impact of suspension on students' connectedness to school.

ATTENDANCE AS A FAPE ISSUE

Ultimately, the school must understand the function, purpose and cause of the attendance issue:

Understanding the root causes of absences as well as what motivates the student to attend can help determine the best course of action.

ATTENDANCE AS A FAPE ISSUE

Ultimately, the school must understand the function, purpose and cause of the attendance issue:

Research is mixed on attendance incentive programs, but success has been shown when motivators are targeted and individualized.

ATTENDANCE AS A FAPE ISSUE

Ultimately, the school must understand the function, purpose and cause of the attendance issue:

Research suggests that the proper response to school refusal is less punitive and should focus on mental health interventions.

ATTENDANCE AS A FAPE ISSUE

The bottom line: Attendance can be a FAPE issue, triggering duties to evaluate, address through the IEP, and provide interventions. Have the right people at the table with the necessary professional skill set is critical for teams working to determine why a student struggles with attendance and develop strategies to address the issue.

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

What does the IDEA
have to say about
attendance?

- Implementation Issues Caused by Attendance

IMPLEMENTATION ISSUES

- When a student isn't present, what's the responsibility to ensure the IEP is implemented?

IMPLEMENTATION ISSUES

- If a student is consistently absent and his truancy is affecting his ability to receive the services in his IEP, the district should take steps to address the issue. Failing to take those steps may amount to an IEP implementation failure.

IMPLEMENTATION ISSUES

- **Joaquin v. Friendship Pub. Charter Sch., 66 IDELR 64 (D.D.C. 2015):** The court concluded that although a teenager's sporadic attendance impeded a charter school's ability to implement his IEP, the school was nevertheless responsible for the student's failure to receive postsecondary transition services.

IMPLEMENTATION ISSUES

- **Forest Grove Sch. Dist. #15, 65 IDELR 278 (SEA OR 2015)**: (finding that a district's efforts to reschedule services and classes for a student who was repeatedly absent and uncooperative with staff satisfied its duty to offer the student FAPE)

IMPLEMENTATION ISSUES

- **Prince George's County Pub. Schs., 121 LRP 6910 (SEA MD 11/10/20)**: (finding that a district violated the IDEA when it failed to address a student's chronic absences and academic struggles).

IMPLEMENTATION ISSUES

In *T.B. v. Prince George's County Bd. of Education*, the 4th Circuit rejected a parent's assertion that the school district violated the IDEA when the student failed to take advantage of the services that the district offered. The 4th Circuit reasoned:

- At the meeting where this program was recommended, T.B.'s parents participated and “were provided with all required procedural safeguards and documentation.” ... T.B. was, albeit belatedly, offered the academic services he sought, yet he chose not to take advantage of them. T.B. “has never attended the Transition Program at Wise,” and his parents “have never told PGCPs why” this is the case ... As the ALJ reasoned, all this therefore “tends to corroborate the view that either the Student, or his Parents, or both, are not interested in the Student receiving academic services from PGCPs.”

T.B., Jr. by and through T.B., Sr. v. Prince George's County Bd. of Educ., 897 F.3d 566, 575 (4th Cir. 2018), cert. denied sub nom. *T.B., Jr. ex rel. T.B., Sr. v. Prince George's County Bd. of Educ.*, 139 S. Ct. 1307 (2019).

IMPLEMENTATION ISSUES

***Washington v. Katy Independent School District*, 123 LRP 9795 (5th Cir. 2023):**

“But absenteeism that frustrates implementing an Individualized Educational Program does not itself show that the Program was deficient.”

IMPLEMENTATION ISSUES

To avoid implementation issues, don't ignore attendance issues. Rather, ensure the IEP team is proactively addressing the concerns. If the team has an appropriately tailored plan, with a cogent and responsive explanation for the decisions, and the student still does not attend, then unlikely to be an implementation failure issue.

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

What does the IDEA
have to say about
attendance?

- Beware of Retaliation Claims

RETALIATION CLAIMS

- Section 504 contains an anti-retaliation provision that expressly prohibits anyone from attempting to thwart the exercise of rights granted by the law to individuals with disabilities. Section 504 incorporates the anti-retaliation provision of Title VI of the Civil Rights Act of 1964. 34 CFR 104.61; and 34 CFR 100.7(e).
- ***The filing of truancy charges sometimes results in retaliation claims, especially when the charges follow closely on the heels of a parent's protected activity.***

RETALIATION CLAIMS

Fall River Pub. Schs., 114 LRP 36314 (SEA MA 07/30/14):

The parents of an 8-year-old with autism, developmental delays, and ADHD was unsuccessful in establishing that a Massachusetts district retaliated against them by initiating truancy proceedings in court and a neglect complaint with a state child protective agency after they filed for due process under the IDEA. Noting that there was "ample independent support" for such complaints given the child's 70-day absence from school without an excuse and without any alternative educational services, the IHO concluded that the evidence did not "support a finding of pretext or of retaliation."

RETALIATION CLAIMS

Marion-Florence (KS) Unified Sch. Dist. #408, 113 LRP 24703 (OCR 03/22/13):

OCR noted that the parent established a prima facie case of retaliation by showing that she engaged in protected activity by requesting a 504 plan and was subjected to an adverse action just 12 days later. However, OCR the principal offered a legitimate, non-pretexual basis for the action, OCR observed. There was no dispute that the student was absent without an excuse for three consecutive days. Moreover, the reporting of the truancy to DCF and ultimately to the prosecutor was consistent with the district's policies, OCR wrote. It was also consistent with the school's practice, as demonstrated by the other truancy referrals the principal made that year.

RETALIATION CLAIMS

Vernon (CT) Pub. Schs., 120 LRP 31304 (OCR 07/07/20):

A Connecticut district's efforts to address the continued absenteeism of a student with unidentified medical conditions and social emotional needs before filing a truancy report helped it overcome a parent's claim that it retaliated against her in violation of Section 504 because she sought to have the student evaluated. Noting that the district's attempts to evaluate and support the student prior to the referral were generally rebuffed by the parent, OCR rejected the contention that the district's truancy referral was an excuse to retaliate. OCR reasoned that the district explained its policies required the truancy referral based on the student's significant number of unexcused absences. OCR found that the district's explanation was consistent with its attendance policy and practice.

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

What does the IDEA have to say about attendance?



• Top Ten Tips!

TOP TEN TIPS!

I. Attendance is not an issue to simply put on the parent or the student: the school has legal responsibility.

TOP TEN TIPS!

2. Attendance can be an adverse effect on educational performance – act accordingly!

TOP TEN TIPS!

3. School refusal is complicated. Don't take a one-size-fits-all approach.

TOP TEN TIPS!

4. Look at system-wide barriers to attendance: transportation, food and nutrition, poverty, etc.



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TOP TEN TIPS!

5. Attendance is mostly about relationships. Build and maintain them.



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TOP TEN TIPS!

6. Research says the “nudge theory” works – nudge parents and students.

TOP TEN TIPS!

6. Research says the “nudge theory” works – nudge parents and students.

Researchers have found that “nudges,” reminders to parents and caregivers about absences, can improve school attendance. Todd Rogers, a Harvard University researcher, describes them as “**unobtrusive interventions to promote desired behavior.**” That means there’s no mandate to do anything and no penalty assigned. In the words of Richard Thaler, the University of Chicago professor who won the 2017 Nobel prize in economics for his work on nudge theory: “**Putting fruit at eye level counts as a nudge. Banning junk food does not.**”

TOP TEN TIPS!

6. Research says the “nudge theory” works – nudge parents and students.

This approach works for improving school attendance, in part, because many parents are unaware of how many days their children have missed. When Rogers and his team surveyed families, parents estimated that their children had missed about nine days of schools in the previous year. In fact, they had all missed at least 17.8 days. Most didn't think their child had missed any more time than other students.

TOP TEN TIPS!

6. Research says the “nudge theory” works – nudge parents and students.

In West Virginia, a pair of researchers used a different medium for the message: texting. Targeting 22 middle and high schools, Peter Bergman and Eric Chen of Teachers College, Columbia University, connected school information systems with teachers' electronic grade books. They then sent weekly alerts detailing any missed assignments and absences—for each class, not just whole-day absences. The results: Course failures dropped by 38 percent, and class attendance increased by 17 percent among the students whose families got the texts, compared to similar students.

TOP TEN TIPS!

7. Staff attendance also matters.



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TOP TEN TIPS!

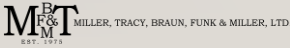
8. Engage other agencies and truancy officials to work as a team.



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TOP TEN TIPS!

9. Pay attention to state law and local policy – and be consistent!



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TOP TEN TIPS!

10. Be proactive, not merely reactive.



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TOP TEN TIPS!

10. Be proactive, not merely reactive.

The Supreme Court held in *Endrew F.* that an IEP must be reasonably calculated to enable a child to make progress that is appropriate in light of his or her circumstances, and that includes attendance and truancy as a factor

WHEN ATTENDANCE, ABSENTEEISM, AND TRUANCY IMPACT FAPE

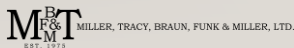
What does the IDEA
have to say about
attendance?

- Questions!?

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