

Typical Facts in Determining Appropriateness of an IEP (Including Behavioral Elements)

Applicable Law

1. (Statement as to whether the district of the parent) has the burden of proof as to the issue designated in this Decision. (*Schaffer v. Weast* (2005) 546 U.S. ____ [163 L.Ed.2d 387].)
2. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA) and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Ed. Code § 56000.¹) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1401(8) (IDEA 1997); 20 U.S.C. § 1402(9) (IDEIA 2004).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(25) (IDEA 1997); 20 U.S.C. § 1402(29) (IDEIA 2004).)
3. Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code § 56031.) The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(22) (IDEA 1997); 20 U.S.C. § 1402(26) (IDEIA 2004).) In California, related services may be referred to as designated instruction and services. (Ed. Code § 56363, subd. (a).)
4. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.Ct. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Id.* at 201.)
5. To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of each district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the district's program was designed to address the student's unique educational needs, was reasonably calculated to provide student some educational benefit, and comported with student's IEP, then the district provided a

¹ All statutory citations to the Education Code are to California law, unless otherwise noted.

FAPE, even if student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit.

School districts are also required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); Ed. Code § 56031.)

6. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)² It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)
7. Rowley also recognized the importance of adherence to the procedural requirements of the IDEA as part of the FAPE analysis. Pursuant to 20 U.S.C. section 1415(f)(3)(E)(ii), of IDEIA, for a procedural violation to deny the student FAPE the procedural violation must either: 1) impede the student's right to FAPE; 2) significantly impede a parent's opportunity to participate in the education decision making process; or 3) caused a deprivation of educational benefits.
8. Pursuant to 20 U.S.C. section 1415(b)(3), a school district is required to provide written notice to the parents of the child whenever the school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.³
9. Title 20 United States Code section 1415(c)(2)(E) and Education Code section 56502(e) provide that a party may amend the Complaint only if the Administrative Law Judge grants permission, or the other party consents to the filing of an Amended Complaint.
10. Title 20 United States Code section 1415(f)(3)(B) and Education Code section 56502(i) provide that a party is not allowed to raise at hearing issues that the party did not raise in the complaint, unless the other party consents.

² Although *Adams* involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Off. of Education* (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (*Pitchford v. Salem-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F. Supp. 2d 1213, 1236).

³ Education Code section 56500.4 states: Pursuant to paragraphs (3) and (4) of subsection (b) and paragraph (1) of subsection (c) of Section 1415 of Title 20 of the United States Code, and in accordance with Section 300.503 of Title 34 of the Code of Federal Regulations, prior written notice shall be given by the public education agency to the parents or guardians of an individual with exceptional needs, or to the parents or guardians of a child upon initial referral for assessment, and when the public education agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child.