

65<sup>TH</sup> CONFERENCE ON EXCEPTIONAL CHILDREN



**GRADUATION:**  
**The Measure of Tomorrow**

**Art and Science:  
Understanding and  
Effectively Implementing  
the IEP**

Karen Haase

PUBLIC SCHOOLS OF NORTH CAROLINA  
State Board of Education | Department of Public Instruction

**November 18-20, 2015**

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**What's the Plan?**

- Participants in IEP Meeting
- Elements that Must Appear in Written Document
- Implementation Issues

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## Mandatory Participants

34 CFR 300.321 (a)

1. Parents
2. Regular education teacher
3. Special education teacher
4. Representative of the public agency
5. Individual who can interpret the evaluation results
6. Other individuals who have knowledge or expertise (at parents'/LEA's discretion)
7. Whenever appropriate, the child with a disability.

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## Parents

definition in 34 CFR 300.30

- Definition of parent under 34 CFR 300.30:
  - biological or adoptive parent of a child
  - foster parent, unless State law prohibits
  - guardian authorized to act as the child's parent, or to make educational decisions (but not the State if the child is a ward of the State)
  - individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives
  - surrogate parent

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## Parent Participation Decisions



"Son, I'd like us to spend more quality time together. Would you accept me as a Facebook friend and let me follow you on Twitter?"

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## Parent Participation Decisions

- Doug C. v. Hawaii Dep't of Ed., 720 F.3d 1038 (9<sup>th</sup> Cir. 2013)
  - Request to reschedule due to illness not refusal to attend
  - Need to conduct annual review doesn't justify excluding parents
- Toledo City Sch. Dist. v. Horen, 55 IDELR 102 (N.D. Ohio 2010)
  - Asking to reschedule is not refusing to attend
  - Schedule of large team doesn't justify excluding parents
- T.S. v. Jerry D. Weast, 54 IDELR 249 (D. Md. 2010)
  - Repeated rescheduling can constitute refusal to attend
- B.H. v. Joliet Sch. Dist. No. 86, 54 IDELR 121 (N.D. Ill. 2010)
  - School not required to schedule meetings after hours

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## Regular education teacher

34 CFR 300.321(a)(2)

- "Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)"
- R.G. v. New York City Dept. of Ed., 62 IDELR 84 (E.D.N.Y. 20013)
  - "...this Court recognizes that the inclusion of a general education teacher . . . would not necessarily have led to the formulation of a different IEP. . . . But the teacher would have had the opportunity to provide his or her views about F.G.'s needs and to persuade the other members to consider a general education placement . . .
- M.L. v. Federal Way Sch. Dist., 387 F.3d 1101 (9<sup>th</sup> Cir. 2004)
  - General education teacher couldn't attend, but sent a letter

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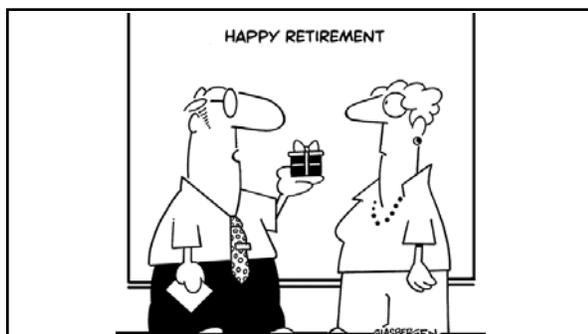
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"In appreciation for 25 years of service as a kindergarten teacher, we made you this gold watch from macaroni and glitter."

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## Special Education Teacher

34 CFR 300.321(a)(3)

- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child
- New York City Dep't of Educ., 45 IDELR 236 (SEA NY 2005)
  - District denied FAPE when it invited a special education teacher who was not actively teaching student
- R.B. v. Napa Valley Unif. Sch. Dist., 496 F.3d 932 (9th Cir. 2007)
  - District could not name special education director to serve as special education teacher on the team when teachers serving student couldn't attend
  - School still won – student didn't qualify

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## Representative of the public agency

34 CFR 300.321(a)(4)

- A representative of the public agency-
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - Is knowledgeable about the general education curriculum; and
  - Is knowledgeable about the availability of resources of the public agency
- Pitchford v. Salem-Keizer Sch. Dist., 155 F. Supp. 2d 1213 (D. Ore. 2001)
  - First year, attendance district's autism specialist served as district rep in principal's absence
  - Next year, failure of district representative to attend denied FAPE because no one could address parents' questions about resources

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### Individual who can interpret the evaluation results

34 CFR 300.321(a)(5)

- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section
- Anchorage School District, 51 IDELR 230 (SEA AK 2008)
  - team did not include an individual qualified to interpret the educational implications of two independent evaluations without which, the team could not have understood or considered those evaluations

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### Other Individuals

34 CFR 300.321(a)(6)

- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- Blackman v. District of Columbia, 64 IDELR 169 (D.D.C. 2014)
  - School found to have violated FAPE when it had student's attorney excluded from IEP meeting

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### The Child

34 CFR 300.321(a)(7)

- Whenever appropriate, the child with a disability
- Gibson v. Forest Hills Dist., 62 IDELR 261 (S.D. Ohio 2014)
  - School didn't include 16-y/o in IEP meetings because it believed conflict would be upsetting
  - Court found that this led to the school failing to consider the student's interests and preferences

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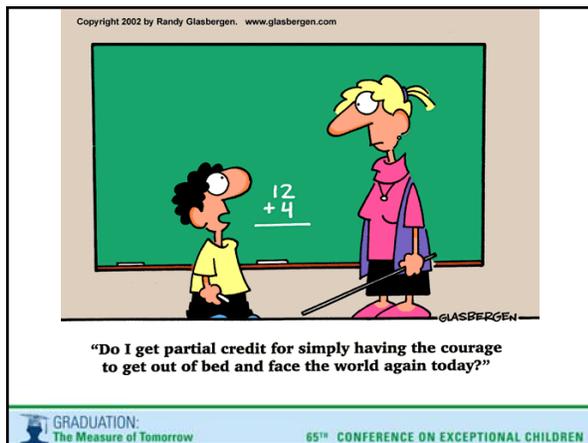
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### Excusing IEP Team Members

34 CFR 300.321(e)

- Team member may be excused if:
  - Parent and public agency agree, in writing, that the attendance of the member is not necessary because the member's area not being modified or discussed
  - Parent and public agency agree, in writing that member can be excused AND the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting
- Includes excusal in whole or in part

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## Team Members Leaving Early

- Charlotte County Sch. Dist., 114 LRP 22660 (SEA FLA. 2013)
  - Regular education teachers left early
  - Parents not informed and did not consent in writing
  - SEA issued finding on non-compliance

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"Larry never talks during meetings, doesn't contribute any ideas or suggestions. I think we should make him Employee of the Year."

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## Required Contents of IEP

34 CFR 300.320(a)



"Here are the minutes of our last meeting: We drank a lot of coffee and everybody disagreed about everything until Todd looked like he was going to cry and then everyone was really super nice."

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### Required Contents of IEP

34 CFR 300.320(a)

1. PLEP or PLOP
2. Measurable annual goals
3. How progress will be measured
4. Statement of services and supplementary aids
5. Extent child will not participate in mainstream
6. accommodations on assessments
7. Start date and duration of services
8. Transition services
9. Transfer of rights at age of majority

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### “PLEP” or “PLOP”

34 CFR 300.320(a)(1)

- A statement of the child's present levels of academic achievement and functional performance, including--
  - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

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### “PLEP” or “PLOP”

- In re Child with a Disability, 50 IDELR 236 (SEA NY 2008)
  - "Similarly, other than stating that the student has 'delays in fine-motor coordination,' the IEP lacks any information about the severity of his fine-motor impairment and how that impairment affects his ability to complete school-based fine-motor activities,"
- Baltimore City Pu. Schs, 113 LRP 14659 (SEA MD 2013)
  - PLEP did not identify need for functional life skills, so IEP goal to “improve functional life skills” improper

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### Measurable Annual Goals

34 CFR 300.320(a)(2)

- A statement of measurable annual goals, including academic and functional goals designed to—
  - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
  - (B) Meet each of the child's other educational needs that result from the child's disability;

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### Measurable Annual Goals

34 CFR 300.320(a)(2)

- Jefferson County Bd. v. Lolita S., 64 IDELR 34 (11<sup>th</sup> Cir. 2014) (unpublished)
  - High school student reading at 1<sup>st</sup> grade level, but IEP reading goal based on state standard for 9<sup>th</sup> grade
- Mason City Cmty. Sch. Dist, 46 IDELR 148 (SEA IA 2006)
  - "stranger" test: Could a stranger to the IEP goal be able to implement the goal, be able to implement the assessment of student's progress on the goal, and be able to determine whether the student's progress was satisfactory.
- Bellflower Unif. Sch. Dist., 54 IDELR 66 (DEA CA 2010)
  - Found denial of FAPE when district failed to have at least one goal for every area of need identified

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"I'm not sure you understand what I mean by career goals."

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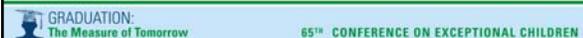
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### Progress Measures and Reports

34 CFR 300.320(a)(3)

A description of--

- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;




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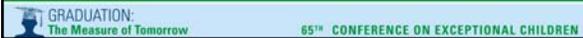
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### Progress Measures and Reports

34 CFR 300.320(a)(4)

- Jaccari J. v. Board of Ed. of City of Chicago, 54 IDELR 53 (N.D. Ill. 2010)
  - Not required to use standardized tests as a measure of progress
- Eastland Cmty. Unit Sch. Dist. #308, 10 ECLPR 54 (SEA IL 2012)
  - goals for student to "increase" and "improve" specific skills have no provide criteria for measurement
- District of Columbia Pub. Schs., 12 ECLPR 59 (SEA DC 2014)
  - Behavior goals had no baseline data and did not identify the way that student's progress would be measured IEP didn't include schedule according to which the district could gauge the student's progress




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"If he's doing so bad, why is it called a progress report?"

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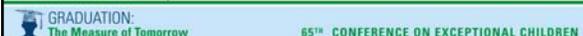
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### Special Education and Services

34 CFR 300.320(a)(4)

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;




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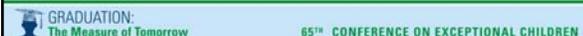
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### Special Education and Services

34 CFR 300.320(a)(4)

- Reyes v. New York City Dept of Ed, 63 IDELR 244 (2d Cir. 2014)
  - IEP recommend 1:1 para for 3 months to ease transition
  - Possibility of mid-year amendment did not entitle district to judgment on reimbursement claim
- Pikeland Cmty. Unit Sch. Dist. 10, 113 LRP 29936 (SEA Ill. 2013)
  - School failed to provide FAPE when it did not provide services to address student's anxiety and depression
  - Informal efforts, even when listed in notes, not adequate




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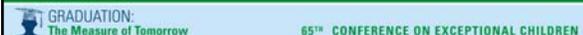
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### Extent Child Not Mainstreamed

34 CFR 300.320(a)(5)

An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;




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### Extent Child Not Mainstreamed

34 CFR 300.320(a)(5)

- Knox Cmty. Sch. Corp., 50 IDELR 265 (SEA IN 2008)
  - School failed to provide FAPE when IEP said students should receive 90 minutes a day in gen. ed. setting and instead received 55 minutes a day
- Hannah. L. v. Downingtown Area Sch. Dist. 63 IDELR 254
  - School proposed pull-out for language arts instruction
  - “failure to identify reasons for Hannah’s exclusion from the regular classroom, a procedural issue. . . Constitute[d] a denial of a FAPE”

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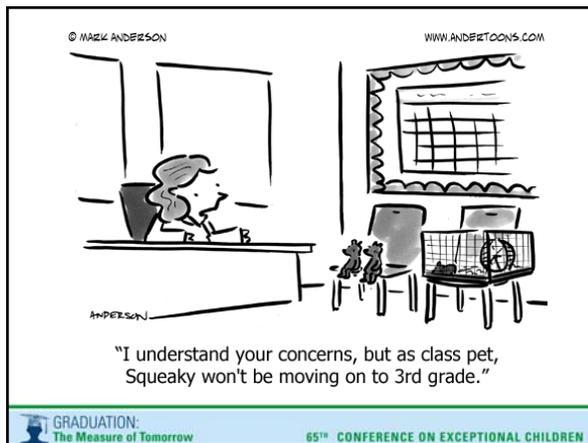
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### Accommodations on Assessments

34 CFR 300.320(a)(6)

- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
- If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--
  - (A) The child cannot participate in the regular assessment; and
  - (B) The particular alternate assessment selected is appropriate for the child; and

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### Accommodations on Assessments

34 CFR 300.320(a)(6)

County Sch. Be. Of York County, Va v. A.L.,  
46 IDELR 94 (4th Cir. 2006)

- Student's IEP said he would participate in alternative assessment
- When student moved to 12<sup>th</sup> grade, school did not have him participate in alternative assessments because not available to seniors
- Court found procedural violation because district cannot unilaterally amend IEP

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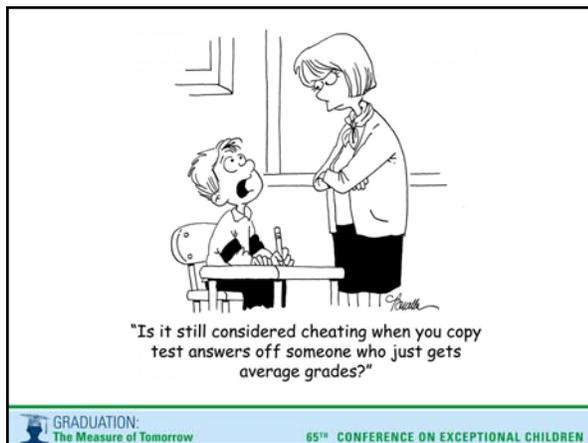
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### Start date and duration of services

34 CFR 300.320(a)(7)

The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

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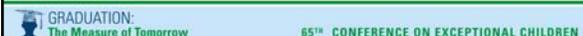
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### Start date and duration of services

34 CFR 300.320(a)(7)

- Eley v. District of Columbia, 59 IDELR 189 (D.D.C. 2012)
  - 23-day delay in informing family of start date and location of student’s placement was denial of FAPE justifying reimbursement for private school
- Letter to Ackerhalt, 60 IDELR 21 (OSEP 2012)
  - Parents’ attorney asked OSEP if policy where school begins related services on third week of school lawful
  - OSEP: No. All services must be based on individual needs of student – district-wide policy not individualized



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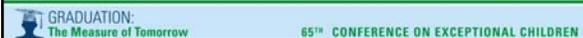
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### Transition Services

34 CFR 300.320(b)

- Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--
  - (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
  - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.



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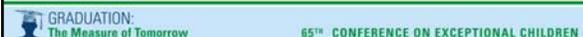
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### Transition

34 CFR 300.320(b)

- Letter to Moore, 30 IDELR 189 (OSEP 2002)
  - High school not obligated to arrange for testing to determine whether a student will be eligible for services when he goes to college
- Park Hill Sch. Dist. v. Dass, 655 F.3d 762 (8<sup>th</sup> Cir. 2011)
  - Students with autism in private school; school’s proposed IEP did not include transition plan
  - Court: transition plan not required if under 16; also after parents filed for due process, school proposed to meet and parents refused



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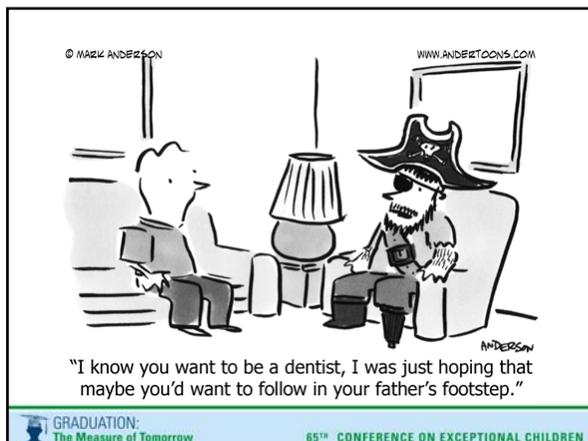
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**Must Also Consider "Special Factors"**  
34 CFR 300.324(a)(2)

1. If 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;
2. If child has limited English proficiency, consider the language needs of the child;
3. If child is visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines otherwise

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**Must Also Consider "Special Factors"**  
34 CFR 300.324(a)(2)

4. The communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language
5. Whether the child needs assistive technology devices and services.

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## Implementation Issues



"To get what you want, first create a list of compelling and meaningful goals. Next, draft a dynamic plan of action, then follow through with consistent maximum effort. If that doesn't work, just cry and point."

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## Informing Teachers of IEP

34 CFR 300.323(d)(1)

- The child's IEP must be "accessible" to each teacher, related services provider, or any other service provider responsible for its implementation.
- In re Student with a Disability, 111 LRP 8947 (SEA Montana 2011)
  - School failed to show that teachers received copies of the IEP they were responsible for implementing

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## More than De Minimis Failures

- Houston Independent Sch. Dist. v. Bobby R., 31 IDELR 185 (5<sup>th</sup> Cir. 2000)
  - Speech not provided some months
  - Legal Standard:
    - "[W]e conclude that to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit."

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### More than De Minimis Failures

- Santa Fe Ind. Sch. Dist., 63 IDELR 207 (SEA Texas 2013),
  - a parent's allegations that the school did not always notify her of missing assignments on the day they came due deemed de minimis
- MS v. Utah Sch. for the Deaf and Blind, 64 IDELR 11 (D. Utah 2014)
  - teacher discontinued use of FM transmitter
  - Court: "While some deference should be given to teachers, the . . . classroom teacher [is required] to implement the components, even the ones that the teacher may not agree with or care to implement"

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### Staffing Barriers

- Letter to Fox, 211 IDELR 26 (OSEP 1978)
  - Objections or lack of cooperation from school staff must be addressed by schools internally, in the same manner as other staff-agency disagreements
- Letter to Anonymous, 17 IDELR 391 (OSERS 1990)
  - Collective bargaining agreement to the contrary cannot excuse failure to implement IEP

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### Lack of Resources

- Letter to Angelo, 213 LRP 9074 (OSEP 1988)
  - The U.S. Department of Education (USDE) has long held that lack of resources, whether of staffing, facilities, or finances, is never an excuse for failing to provide the required IEP services
- Modoc County (CA) Office of Educ. (OCR 1996)
  - IEP called for adaptive PE
  - School could not find certified teacher
  - Ordered to hire private consultant too expensive
  - Waiver for teacher provisionally cert
  - \$40,000.00 per year vs. \$1200.00

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### Check the Culture

Antioch (CA) Unified Sch. Dist., 110 LRP 49063 (OCR 2010)

- OCR found "a pattern and practice of individual staff members unilaterally changing, altering, reducing, or deleting accommodations or services from IEPs that have already been written without authorization and doing so without notice to the parent or the team of persons who made and documented the placement decision."

GRADUATION: The Measure of Tomorrow 85<sup>TH</sup> CONFERENCE ON EXCEPTIONAL CHILDREN

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### Documentation of Implementation

- Lee County Sch. Dist., 114 LRP 23165 (SEA Florida 2014)
  - No documentation that school provided speech therapy services and classroom accommodations
  - Existing documentation showed the student did not receive all the special education instruction
- East Allen County Sch. Corp., 63 IDELR 60 (SEA Indiana 2014)
  - No documentation showing teacher notes provided and used during tests
  - E-mail survey to teachers inadequate to provide
  - SEA looked for notes, lesson plans, etc.

GRADUATION: The Measure of Tomorrow 85<sup>TH</sup> CONFERENCE ON EXCEPTIONAL CHILDREN

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### Implementation of BIP

In Mesa County Valley Sch. Dist. 51, 113 LRP 33665 (SEA Colorado 2013)

- 9<sup>th</sup> grader became agitated and volatile with transitioning from class to class
- After several aggressive incidents, the team revised recommended therapeutic day program
- H.O.: school implemented BIP "with fidelity and in good faith."

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### Paraprofessional Assistance

- Manalansan v. Bd. of Educ. of Baltimore City, 35 IDELR 122 (D.Md. 2001)
  - School district could not hire aides who were punctual and consistent
  - Court: "school's good faith efforts did not discharge its duty to implement that important aspect of the student's IEP"
- Slama v. Independent Sch. Dist. No. 2580, 39 IDELR 3 (D. Minn. 2003)
  - Changing aide not a failure to implement the IEP

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**Questions?**

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 KSB School Law  
 @KarenHaase



"There are some things even God doesn't understand.  
That's why He created lawyers."

 GRADUATION:  
The Measure of Tomorrow

85<sup>TH</sup> CONFERENCE ON EXCEPTIONAL CHILDREN

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