

Arizona Autism Coalition presents

What's This Thing Called FAPE: A Parent's Guide to Special Education

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The law firm of Kirsch-Goodwin & Kirsch is dedicated to advising and representing students in all school related matters including at IEPs, Due Process, MDRs and disciplinary matters including suspensions and expulsions, bullying, and restraint and seclusion issues.

Lori Kirsch-Goodwin has been a litigation/trial attorney for over 25 years and has had over 30 jury trials. She obtained her B.A. at Syracuse University and her law degree at the University of Bridgeport (now Quinnipiac University). She is admitted to the state and federal district courts in New York, New Jersey, Arizona and the 9th Circuit Court of Appeals. Lori entered the special education arena over 12 years ago when one of her twin boys was evaluated for special education and related services, and has been advocating for and representing other families since. Her son with special needs is now entering his second year at a local community college. Lori brings her litigation skills to the table as well as her sensitivity for the families she represents. Lori is AV® Preeminent rated by her peers and judges, representing the highest rating in legal ability and ethical standards. Lori recently won a case before the 9th Circuit Court of Appeals that involved appropriateness of a school's selection of location of a school for a student on the spectrum.



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Hope Kirsch is a licensed special education teacher and special education attorney. She advises and represents students and their families throughout Arizona in all school related matters and disputes. Prior to her law career, Hope was a special education teacher and school administrator for nearly 20 years in NYC in settings ranging from self-contained classes to special education day schools and hospital programs. She supervised and trained special education teachers in teaching strategies, curriculum development, IEPs and behavior management. Hope earned a B.S. in special education from Boston University, an M.A.(Ed.) in special education from New York University, 30+ post-graduate credits in educational supervision and administration, and her J.D. from Brooklyn Law School. She is admitted before the state and Federal District courts in NY, NJ, AZ and the 9th Circuit. She is AV-rated. Most importantly, she is the proud aunt to young man on the spectrum.



FAPE

- Free
- Appropriate
- Public
- Education

Who is entitled to a FAPE?

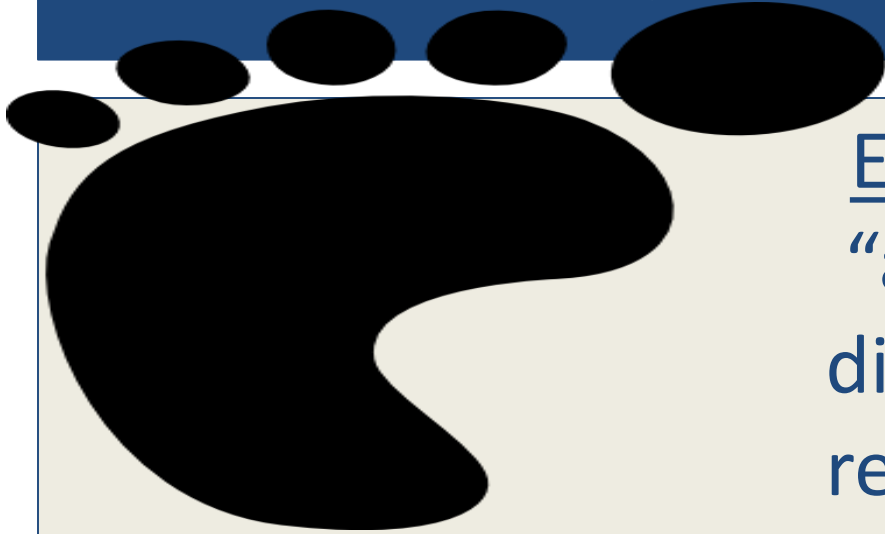
- Children 3 - 21 (22)
- Identified as *eligible*

What does it mean to be “eligible”?

1. Autism (A)
2. Developmental delay (DD)
3. Emotional disability (ED) *
4. Hearing impairment (HI) *
5. Other health impairments (OHI) *
6. Specific learning disability (SLD)
7. Mild, moderate or severe ~~mental retardation~~ intellectual disability
8. Multiple disabilities (MD) *
9. Multiple disabilities w/ severe sensory impairment (MDSSI)
10. Orthopedic impairment (OI) *
11. Preschool severe delay (PSD)
12. Speech/language impairment (SLI)
13. Traumatic brain injury (TBI) *
14. Visual impairment (VI)



Eligibility, Step 2



Educational need:
“and who, because of the disability, needs SPED and related services.”

Eligibility for Autism in Arizona

- developmental disability
- significantly affects verbal and NV comm & social interaction
- **AND** *adversely affects performance IN educational environmt.*
- Characteristics include:
 - irregularities and impairments in communication;
 - repetitive activities & stereotypical movements;
 - resistance to environmental change / changes in routines;
and
 - unusual responses to sensory experiences.
- Not incl children with ED.

What is special education?

- *Specially designed instruction*
- No cost to parents
- Meet unique needs
- In LRE

What is *specially designed instruction*?

- Adapting
 - **Content**
 - **Methodology, or**
 - **Delivery of instruction**
- To address unique needs, and
- To ensure access to general curriculum so child can meet educational standards.

34 C.F.R. § 300.39(b)(3)

What does FAPE get you?

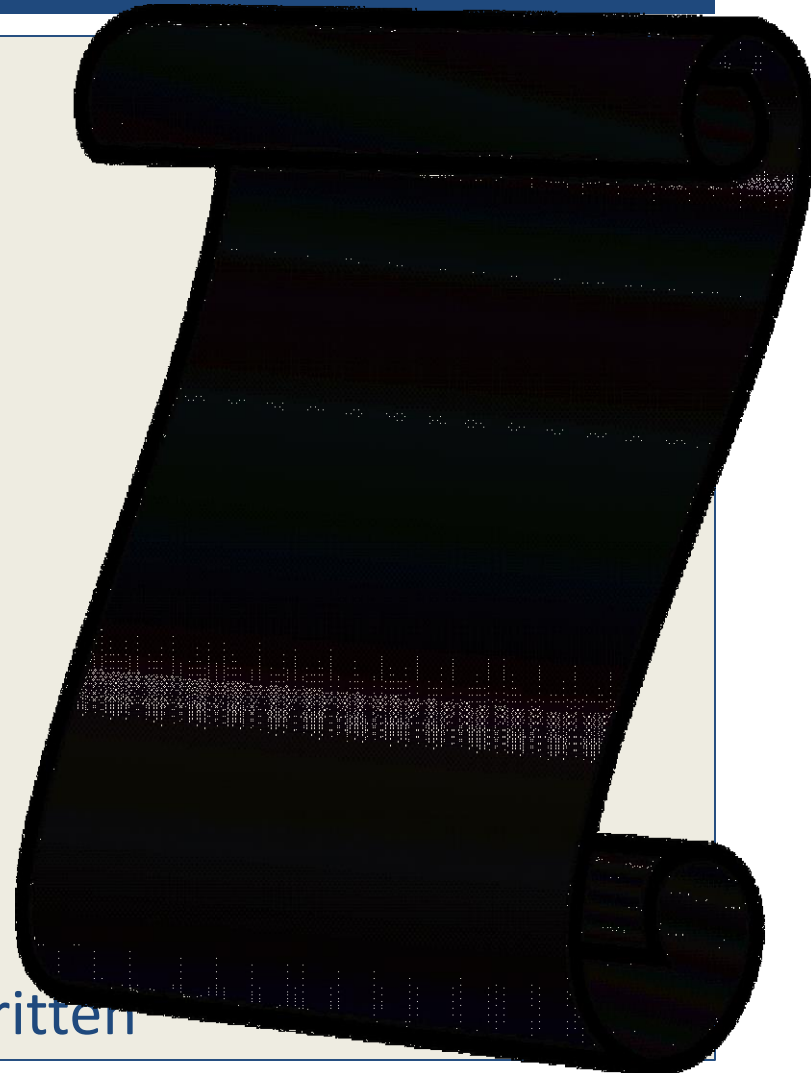
- Substantive
- Procedural protections

Procedural Safeguards

34 C.F.R. 300.504

- ✓ IEE
- ✓ PWN
- ✓ Parental consent
- ✓ Access to ed records
- ✓ State & DP complaints
- ✓ Mediation
- ✓ Stay-put
- ✓ IAES
- ✓ Unilateral placement in private school
- ✓ Disclose evals in DP
- ✓ State-level appeals
- ✓ Civil actions
- ✓ Attorneys' fees

In “understandable language” –
“native lang or other mode” if not written



Nature of Violations

Substantive Violations

Procedural Violations

- i. Impede child's right to a FAPE;
- ii. Significantly impede parent's opportunity to participate in D-M process regarding provision of FAPE to child;
- iii. Cause deprivation of educational benefit.

34 C.F.R. § 300.513

A word about procedural violations: Harmless or not?

- Parent not provided IEP Meeting Notice
- Teacher not at MET meeting
- Gen Ed teacher not at IEP
- IEP Team pre-determines placement
- IEP Team decides location
- IEP meeting without parent
- Annual IEP not held on time

What's the denial of FAPE?

- Impede child's right to FAPE?
 - Impede parent participation?
 - Deprive student educational benefit?
-

Failure to include OT provider at IEP meeting?

Failure to assess child in all areas of suspected disability?

Delay in providing AT as required by IEP?

Failure to provide student with OT services per IEP?

What about Progress?

“Rowley”

- FAPE not require schools maximize potential
- IDEA’s intent : “more to open the door of public education ... not guarantee any substantive level of education once inside”
- Provide “basic floor of opportunity” which “consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”
- IEP must be reasonably calculated to enable child to receive *educational benefit*
- FAPE education sufficient to confer some educational benefit upon the handicapped child.

BOARD OF EDUCATION of the HENDRICK HUDSON CENTRAL SCHOOL DISTRICT, WESTCHESTER COUNTY v. Amy ROWLEY, 458 U.S. 176, 102 S.Ct. 3034 (1982)

Endrew F. v. Douglas County School District

- Challenge to *de minimus* educational benefit
- Procedural challenges:
 - Progress reporting
 - Behavioral assessment
- Substantive challenge - IEP substantively inadequate
 - Similar IEPs → lack of progress → not reasonably calculated to provide educational benefit
 - ALJ failed to consider escalating B problems
- ALJ → District Court → 10th Cir:
 - FAPE was made available
 - Benefit received was “more than *de minimis*”

Supreme Court

The Pivotal Issue – Educational Benefit – How much is Enough?

- Rowley – “some educational benefit”
- 10th Cir – “more than de *minimis*”
- 1st Cir – just above trivial
- 2nd - more than only trivial advancement
- 4th - some
- 3rd, 5th, 6th – higher standard: “meaningful”
- 7th and 11th – more than trivial, trifle not enough
- 8th – more than slight, more than *de minimus*
- **9th Cir – split bet. heightened benefit std. and lower std.**

Examples of violations

Identification/"Child Find," Evaluation, Placement
Predetermination

LRE

Failure to implement IEP

Failure to conduct FBA

Failure to create / implement BIP

Bullying

Restraint & seclusion

Transition

I managed to get
everything my child
needed, in his I. E. P.

Now I will celebrate!!!



som^{ee}cards
user card



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