

Special Education Jeopardy

*How to Ensure Compliant IEP and Steps to
Take for Impartial Hearing*

Special Education Seminar
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Presented by:

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Question #1 - Should the District provide a student's IEP to teachers and related service providers?

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Yes

No

Question #1 - Answer

- (A) Yes.
- The IEP is the document that guides the delivery of specially designed instruction to meet the student's needs. Therefore, school personnel (including substitute teachers) and other service providers that have a responsibility for implementing a student's IEP must have that information readily available to them. See N.Y. Educ. Law Section 4402(7).
- Section 504 plans should also be provided to appropriate school personnel to ensure that the student's needs are addressed.

Question #2

On October 1, 2023, Madeline filed an impartial due process hearing involving her son. She claimed that the specialized reading instruction provided to her son has not been yielding adequate progress in his reading skills. She requested that the school district reimburse her for the cost of enrolling her son into a private school.

After receiving the hearing request, the Special Education director was told by the school attorney to gather the student's records and send them over.

Question #2 - What records should be sent?

All progress reports of the student related to his IEP goals

All evaluations of the student, including OT, speech, and psychological

Report cards from the past two years

All of the above

Question #2 - Answer

- (D) All of the above
- Educational records must be gathered, and witnesses selected, to ensure that the school district is ready to present its case and prove that it has offered a FAPE in the LRE.

Question #3

Andrew is the parent of a student with autism. During the Annual Review meeting, the student's teachers stated that his son was not performing well in the class and needed a more restrictive setting. Andrew was against removing his son and wanted to keep him in the same classroom for the following year. The CSE went against Andrew's wishes and recommended a more restrictive classroom for the student. Before the student was removed into the new class, Andrew filed for an impartial due process hearing.

Question #3 - What is the student's stay-put (or pendency) placement during the due process hearing?

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The student's current classroom

The classroom recommended by the CSE

An alternative placement as ordered by the IHO

Question #3 - Answer

- (A) The student's current classroom.
- The IDEA and the Education Law require that a student remain in his or her then current educational placement, unless the student's parents and the school otherwise agree, during the pendency of any proceedings relating to the identification, evaluation, or placement of the student.
- Under the IDEA, the pendency inquiry focuses on identifying the student's then current educational placement. Although not defined by statute, the phrase "then current placement" has been found to mean either: (1) the placement described in the student's most recently implemented IEP; (2) the operative placement actually functioning at the time when the due process proceeding was commenced; or (3) the placement at the time of the previously implemented IEP.

Question #4

Ryan attended a CSE meeting concerning his daughter, June. During the meeting, the CSE reviewed June's PLEPs and goals, and determined that they remained appropriate. Therefore, the CSE decided to keep the same PLEPs and goals as the prior school year. Ryan objected, stating that he felt that the speech goals were overly ambitious and needed to be revised. During this discussion, the OT announced that he had a session scheduled with another student and needed to leave. After further discussion, the CSE rejected Ryan's request to change June's speech goals and he decided to file an impartial due process hearing request.

Question #4 - What potential procedural violations can Ryan assert?

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The CSE did not agree to his demand to revise the speech goals

The CSE improperly retained the same PLEPs and goals as the prior school year

The OT was improperly excused from the CSE meeting

The CSE did not allow the parent to fully participate at the meeting

Question #4 - Answer

- (C) The OT was improperly excused from the CSE meeting.
- Federal regulations require that meeting notice inform parents of who (name and title) will be in attendance at the meeting. The school district must notify the parent of any individual who will be in attendance at the meeting to the extent known.
- When the district notifies the parent of individuals who will attend the meeting, it is because the district has determined that these individuals are needed to develop or review and, as appropriate, revise the student's IEP. Therefore, while the meeting *could* proceed without their attendance, the Committee should take steps to ensure their input is considered at the meeting.

Question #5

Lindsay is a special education attorney representing families. She was contacted by a parent after a school district suspended her daughter from school. The student, who is diagnosed with ADHD, was involved in a fight with another student.

The school suspended the student for 15 days and determined that the fight was not a manifestation of her disability. After reviewing the matter, Lindsay determined that the program did not adequately address the student's behavioral needs and did not include a functional behavioral assessment/behavior intervention plan. She files an impartial due process hearing on behalf of the parent.

Question #5 (Part 1) - If Lindsay challenges the manifestation determination, can she request an expedited hearing?

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Yes

No

Question #5 – Answer No. 1

- (A) Yes
- In matters involving disciplinary changes in placement of a student having or suspected of having a disability, a parent may request an expedited impartial hearing in which shorter timelines are imposed.
 - Resolution meeting = 7 days
 - Expedited due process hearing (unless resolved) = 15 days
 - Expedited due process hearing must occur = 20 school days
 - The IHO's determination = 10 school days after the hearing
- No extensions!

Question #5 (Part 2) - Can Lindsay's general claims of FAPE denial be separated from the disciplinary matters subject to an expedited schedule?

Yes

No

Question #5 – Answer No. 2

- (A) Yes.
- The school district may request (and IHOs will typically grant the request) to bifurcate the hearing by holding the expedited issue first and reserving the remainder of the parent's claims for a later hearing.
- This practice is in compliance with State guidance which requires that whenever a parent submits a request for an impartial hearing including both expedited and nonexpedited issues, the school district must set up the expedited and nonexpedited issues as two cases with separate timelines.

Question #6

Luisa is the parent of a child with a disability. After reviewing the student's updated IEP, she noticed the goals had been recycled from the prior school year. Luisa contacts the school and accuses them of not providing her child with a FAPE.

Question #6 - Is Luisa correct?

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Yes

No

Question # 6 - Answer

- (A) No.
- In all likelihood, “recycling” goals in and by itself will not be considered a violation of FAPE. However, the CSE must ensure that all goals are carefully reviewed and all decisions to include the same or similar goals each school year are data-driven and supported by current evaluative data and provider/teacher input.

Question #7 - When the District receives an impartial hearing request, is there a reporting obligation to the State Education Department?

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Yes

No

Question #7 - Answer

- (A) Yes.
- After notifying the parent of mediation and providing them with a copy of the Procedural Safeguards Notice, each board of education or designee is required to report information relating to the impartial hearing process including, but not limited to, the request for initiation and completion of each impartial hearing. Data required for impartial hearings must be submitted electronically through the Impartial Hearing Reporting System (IHRS).

Question #8 - What is the maximum rate of pay that a hearing officer may receive from the District?

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\$300 per hour

\$200 per hour

\$100 per hour

\$75 per hour

Question #8 - Answer

- (C) \$100/hour (max. for pre-hearing, hearing and post-hearing activities)
- Commissioner's regulations Section 200.21 requires that an impartial hearing officer shall be compensated in an amount not to exceed the applicable rate prescribed in a schedule of maximum rates approved by the Director of the Division of Budget.

Question #9 - How many days is the resolution period under the Part 200 regulations?

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60 days

30 days

15 days

10 days

Question #9 - Answer

- (B) 30 days
- The school district must convene a resolution meeting within 15 calendar days of receiving the due process complaint notice from the parent. The meeting must occur unless the parent and school district agree, in writing, to waive the resolution process, or agree to use the mediation process. (8 NYCRR Section 200.5(j)(2)).



Thank you!