

# The Role of the Local Education Agency Representative, Least Restrictive Environment, and Compensatory Education

**Tate Ball**

*Associate General Counsel for Special Education*

Tennessee Department of Education  
Office of General Counsel





# Agenda

- The Role of the Local Education Agency (LEA) Representative
- Tips for Leading Meetings
- Implementation the Individualized Education Program (IEP)
- Compensatory Education
- Least Restrictive Environment (LRE)

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# The Role of the LEA Representative

# Mandatory School-Based Team Members

- Under the Individuals with Disabilities Education Act (IDEA), an LEA must ensure that the individualized education program (IEP) team for every meeting includes the following:
  - At least one regular education teacher
  - At least one special education teacher
  - A qualified **LEA Representative**
  - An individual who can interpret evaluation results

[34 C.F.R. § 300.321\(2\)-\(5\)](#)



# Requirements for an LEA Representative

1. Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of a child with disabilities;
2. Knowledgeable of the general education curriculum; and
3. Knowledgeable about the availability of resources of the LEA.

[34 C.F.R. § 300.321\(a\)\(4\)](#)



# Risks of an Unqualified Representative

- *Pitchford v. Salem-Keizer Sch. Dist. No. 24J*, 101 LRP 444, (D. Ore. 2001) – No qualified LEA Rep = denial of FAPE
- *Tamalpais Union High Sch. Dist.*, 115 LRP 39394 (SEA Cal. 2015) – Rep lacked authority to commit resources – Parents' participation rights were impacted

# LEA Representative as Process Leader

- “Process Person” vs. “Content People” (teachers, evaluators)
- Guide discussion and ensure all voices are heard
- Keep meeting on track and focused on student needs
- Frees content experts to focus on instructional details

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# Building Administrator as LEA Rep

- Principals and assistant principals often make strong LEA reps — they can lead the process while teachers focus on content.
- Often skilled in meeting management.
- Seen as invested in student success.
- Can support special education teachers by managing the process load.





# Why Good Process Reduces Conflict

- Builds trust with parents
- Increases likelihood of legal compliance
- Improves meeting efficiency and IEP quality
- “Content” people are able to focus more on crafting quality IEPs and goals



# What to Discuss During Meeting

IEP team members (including the parent) will discuss and decide on the statements associated with each IEP component, such as:

- Strengths and concerns related to the student's progress
- Present levels of educational performance
- Measurable Annual Goals appropriate for the student
- Accommodations and Access to General Education
- Type of special education services needed by student
- Related services necessary to help student benefit from specialized instruction and intervention
- Eligibility for extended school year
- Eligibility for Special transportation

# You be the judge!

- A fifth-grader with cerebral palsy had difficulty speaking, lacked control over her movements, and required intensive assistance dressing, feeding, and toileting. She exhibited school refusal and avoidance, violent and unsafe maladaptive behaviors, and suicidal ideation, requiring two extended psychiatric hospitalizations.
- When the parent requested in-home services during an IEP meeting, the special education administrator determined that services would not be provided in-person. She acted as the LEA representative and explained that she was solely responsible for making the final decisions for the IEP team.
- The parents filed for due process. Can the LEA rep be final-decision maker?



# You be the judge!

- **Maybe!** The special education administrator is not solely responsible for making team decisions, but may have to make the ultimate decision
- [\*In re: Student with a Disability\*, 122 LRP 20916 \(SEA CT 04/25/22\)](#), the decision was by a single participant, not a team, and the IEP team "was not allowed to have an open mind." Court held that the LEA misunderstood the role of the administrator; it was operating under the incorrect perception that the LEA representative made the final decisions for the team regarding the child's IEP.
- [\*See U.S. Dep't of Educ., Office of Special Educ. Progs., "Letter to Richards," 110 LRP 52287 \(Jan. 7, 2010\)\*](#). If the school-based IEP team members disagree with one another, then the team should continue to discuss the decision with the goal of reaching a unanimous decision. If unanimity cannot be reached, then maintain the status quo until you have more data to guide the decision or have the LEA representative to make the ultimate decision for the IEP team



# Tips for Effective Meeting Process





## Tip #1 Meeting Invitations and Parental Participation

- Notify early, mutually agree on time/place.
- Allow parents scheduling input.
- Accommodate rescheduling when reasonable.
- Make prior written notices parent-friendly so that parents can understand and dispute if needed.

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# Case Law on Participation

- *Doug C. v. Hawaii Dept. of Educ.*, 113 LRP 25045 (9th Cir. 2013).
  - Failure to reschedule = Denial of FAPE
- *D. B. v. Santa Monica-Malibu Unif. Sch. Dist.*, 115 LRP 24831, (9th Cir. 2015)
  - Exclusion of parents from IEP meeting constituted a denial of FAPE
- *Board of Educ. Of the Toledo City Sch. Dist. v. Horen*, 110 LRP 53265 (N.D. Ohio 2010)
  - Must attempt rescheduling, cannot assume refusal

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## Tip #2 Meeting Preparation & Checklists

- Use an IEP meeting prep checklist
- Gather all necessary data, visuals, tech, and supplies in advance
- Remind all team members of their roles and expectations
- Set an agenda for the meeting



## Tip #3 Avoid Predetermination

- Adequately prepare for IEP meetings, but if preparatory staff meetings or other activities occur, make sure that everyone who attends or participates understands that no final determinations regarding identification, evaluation, placement or the provision of FAPE are to be made prior to the meeting with the parents.
- Do not finalize IEP before meeting.
- Share drafts in advance as required but mark as “draft.”
- Document changes from parent input.







## Tip #4 Establish Norms

- Establish and share or post expectations for behavior during IEP meeting.
- Set an agenda and note that anything outside of the agenda may be “parked” for future consideration.
- Establish consequences if a parent, eligible student, advocate, and/or third-party attendee refuses to abide by the meeting norms or otherwise displays abusive behavior toward any LEA staff member.

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# Examples of Meeting Norms

- All meeting participants should be treated with respect and in a professional manner. Personal attacks, raised voices, and disrespectful language are unacceptable and may result in the meeting being paused or rescheduled.
- All meeting participants will listen actively and consider each other's perspectives and input. Active and respectful listening aids in understanding each participant's concerns, finding common ground, and encouraging the team to find solutions rather than assigning blame.
- In the event that more time is needed to complete the meeting, the team will reconvene as soon as possible. When possible, the team should schedule the subsequent meeting before the conclusion of the initial meeting.



# Implementing the IEP

# When IEP Must Be “In Effect”

- Must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.” [34 C.F.R. § 300.323\(c\)\(2\).](#)
- Delay in implementation may rise to denial of FAPE where student is denied a significant portion of the services prescribed by the IEP.



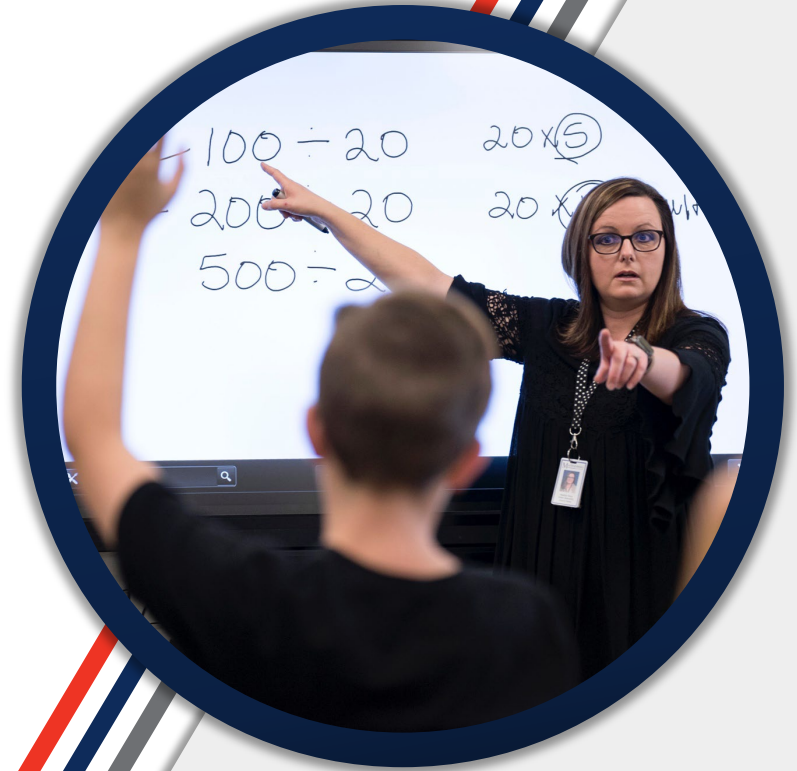
# When IEP Must Be “In Effect”

- “At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in 34 C.F.R. § 300.320.”  
[34 C.F.R. § 300.323\(a\).](#)
- If an IEP has not been finalized by the end of the prior school year, then the LEA must meet with parents during the summer.

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# Who is responsible for implementing the IEP?

- EVERYBODY!
- Every regular education teacher, special education teacher, and service provider is responsible for implementing the IEP must:
  - Understand how to implement it; and
  - Be informed of specific responsibilities for implementation.
- This includes substitute teachers.





# Ensuring Implementation of IEP

- Once the IEP team has met and developed an agreed upon plan, there are several responsibilities of the LEA representative to ensure the IEP is implemented.
  1. Review and sign IEP.
  2. Coordinate and oversee the provision of special education and related services, including scheduling, facilitation of collaborative planning, coordination of any required special transportation, and ensuring special education interventions and services are appropriately implemented.

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# Ensuring Implementation of IEP

3. Ensure each team member understands their roles and responsibilities in implementing the IEP.
4. Commit and provide resources as determined appropriate.
5. Promote instructionally appropriate services that are responsive to student needs.



# What should be documented?

- Accommodations
- Special Education Minutes
- Related Service Minutes
- Participation with General Education Peers
- Progress towards IEP goals/objectives
- Interventions used and effectiveness
- Transition services
- Assistive technology
- Behavior Intervention Plan
- Compensatory services
- Accelerated instruction

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# Who is responsible for documentation?

- Special education teachers
- General education teachers
- Service providers
- BUT administrators should be keeping a close eye on this!
- Be consistent, detailed, organized and professional. You never know what might be used as evidence!



# Compensatory Education





# When should compensatory services be considered?

- Whenever an LEA has not met its obligations under the IDEA, including, but not limited to:
  - When an LEA fails to evaluate a student in a timely manner.
  - When an LEA fails to implement a student's IEP.
  - When a student fails to make appropriate progress in light of their circumstances.
  - When the LEA commits a procedural violation of the IDEA.



# Legal Foundations for Compensatory Education

- The IDEA itself does not expressly identify compensatory education as a remedy.
- Instead, courts have utilized compensatory education as a remedy based on the requirement to **“grant the relief that the court determines to be appropriate.”**  
*See* 34 C.F.R. § 300.516(c)(3).







# Purpose of Compensatory Education

- Compensatory education is awarded to remedy to a denial of FAPE or other violation of special education law.
- Compensatory education is an **equitable remedy**, not a punitive remedy.
- The goal is to **place the student where he or she would have been** if not for the violation of special education law.



# Compensatory Service Approaches

## Hour-for-Hour Approach

- The LEA provides special education and related services to the student in an equal amount of time to the special education and related services that the student was not provided.
- The hour-for-hour approach is often useful when a student misses a smaller number of services and lack of progress can be difficult to measure.

## Totality of the Circumstances Approach

- Under the totality of the circumstances approach, the LEA provides special education and related services to the student in an amount that is designed to ensure the student makes the same amount of progress that the student would have made but for the missed special education and related services.
- The totality of the circumstances approach is preferred when a student misses a larger number of services and lack of progress can be more easily measured.

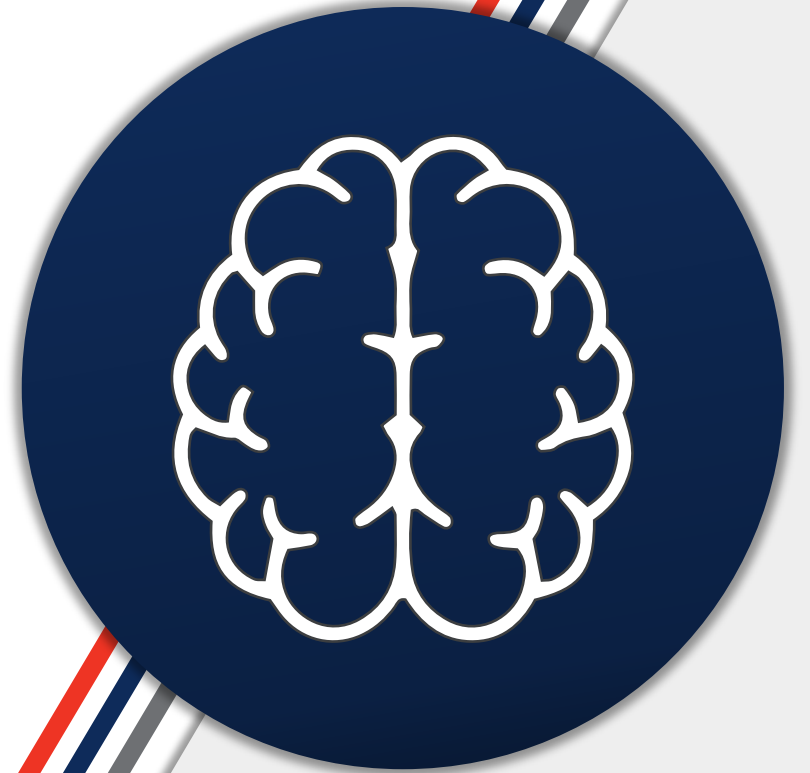
# *Reid v. District of Columbia*

- A due process hearing officer determined the District of Columbia Public Schools denied Student of FAPE for four-and-a-half years.
- The due process hearing officer awarded Student 810 hours of compensatory education: one hour for each day the LEA denied Student FAPE.
- Student's parent argued the due process hearing officer's compensatory damages award was not based on logic or evidence. Student's parent requested Student receive one hour for each hour the LEA denied Student FAPE.



# *Reid v. District of Columbia*

- The Court held:
  - “There is **no obligation to provide a day-for-day compensation** for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.”
  - “[J]ust as IEPs focus on disabled students’ needs, **so must awards compensating past violations rely on individualized assessments.**”
  - Neither the due process hearing officer nor Student’s parent took the right approach.





# Takeaways from *Reid*

- LEAs should craft compensatory education by:
  - Treating compensatory education as an individualized, student-focused remedy.
  - Determining compensatory education based on educational benefits lost.
- Violations of special education law could result in no compensatory education, in less compensatory education than the services missed, or in more compensatory education than the services missed.







# Calculating Compensatory Education

- Compensatory education relates back to what a student needs to receive FAPE and to make “progress appropriate in light of the student’s circumstances.”
- The IEP team should consider the services needed for the student to:
  - Reduce the gap between his level of performance and his peers.
  - Address his exceptionalities.
  - Meet his annual goals.
  - Progress to the next grade level.
  - Score at grade level on state and LEA testing.

# Reminders and Tips

1. Compensatory education must not replace the student's current educational program.
2. Compensatory services should not be documented in the IEP. Keep separate documentation.
3. Talk about scheduling early and often. Be creative with your approaches. Document parental refusals.
4. Compensatory education may be required when the student is no longer enrolled in your LEA.







# Reminders and Tips

5. Be proactive in offering compensatory education when you know the student did not receive services needed for FAPE. Compensatory education makes providing FAPE easier.
6. If compensatory education is awarded by TDOE through an administrative complaint or through FPO monitoring, we expect you to decide an appropriate amount of compensatory education through the IEP team. Make sure you are following IEP team procedures.
7. If compensatory education is awarded by an administrative law judge through a due process hearing, the IEP team cannot overrule the judge. Be prepared to present evidence on the student's need at the hearing!

# Placement and Least Restrictive Environment

# Least Restrictive Environment

- Students with disabilities **must be educated alongside non-disabled peers** to the maximum extent appropriate.
- Students with disabilities must be removed from the regular education environment **only when the student's IEP team determines** that the nature or severity of the student's disability is such **that education in regular classes** with the use of supplementary aids and services **cannot be achieved satisfactorily**.



See [34 C.F.R. § 300.114](#); [State Board of Education Rule 0520-01-09-.12\(5\)](#).

# Examples of Supplementary Aids and Services



## Instructional Supports

- Modified assignments or curriculum
- Repetition or re-teaching of key concepts
- Instructional scaffolding or chunking of tasks
- Assistive technology



## Environmental Supports

- Preferential seating
- Minimized visual and auditory distractions
- Use of quiet corners or calming areas in the classroom
- Visual schedules and posted daily routines



## Behavioral Supports

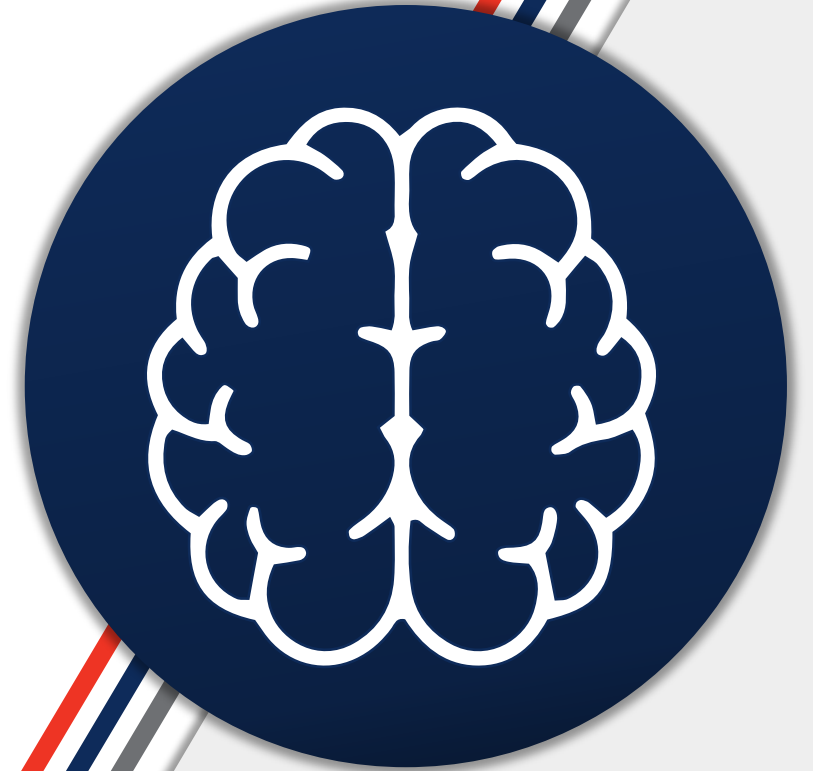
- Positive behavioral supports and interventions
- Behavior intervention plans
- Breaks or check-ins
- Access to a school counselor, social workers, or other adult mentors
- Self-regulation tools (e.g., calm-down cards, timers)



# Discussion

- You have been invited to attend an IEP team meeting. The student is five years old and has been enrolled in the Tennessee Early Intervention Services (TEIS) Extended Option since she was three years old.
- Your school psychologist suspects the student may have an intellectual disability, but the student is currently eligible under the disability category of developmental delay.
- The TEIS case manager has described the student as a “handful” who is unable to follow directions, routinely throws tantrums, and has had issues with biting adults and peers.

**Must the student’s IEP team place the student in the general education classroom?**





# Consideration of Placement

- “First consideration” must be given to placement in the regular education environment. See U.S. Dep’t of Educ., [\*Letter to Cohen\*](#) (Aug. 6, 1996).

“OSEP does not interpret Part B's LRE provision to require that a disabled student actually be placed in the regular classroom and fail before a more restrictive placement is considered.”

- Placement decisions can be based on things other than where the student will receive the best education.

# Age as a Factor in Placement

- What is considered an appropriate placement for a student with a disability will likely depend on the student's age.
- Courts have generally upheld more restrictive placements for students with disabilities in or nearing high school. Why?
  - Lack of data at a young age
  - Importance of socialization at a young age
  - Importance of programming at an older age





# When is placement in a general education classroom not required?



## No Educational Benefit



The student would not benefit from regular education.



## Marginal Educational Benefit



The benefits from placement in a regular education classroom would be far outweighed by the benefits of special education.



## “Disruptive Force”



The student would be a disruptive force in the regular class.



# When is a student a “disruptive force”?

- Courts have generally held that a student is a “disruptive force” if one of the following is true:
  - The student’s behavior interferes with the learning of other students because the **student demands so much of the teacher’s time and attention**,
  - The student’s behavior interferes with the learning of other students because the **student’s behavior is a distraction to classmates**, or
  - The student **threatens the safety of other students or poses a danger to himself** if placed in the regular classroom.

# ***I.L. through Taylor v. Knox Cnty. Bd. of Educ.***

- I.L. had over 50 instances of groping and hitting staff during a single day.
- I.L. threw scissors and magnets at students and pushed down a student with a degenerative brain disease.
- I.L. spit on classmates and pulled their hair so often that other students would pull their hoods up when I.L. walked by.
- Several of I.L.'s classmates were so anxious about having class with I.L. that they had to speak with the school counselor about coping mechanisms.
- On most school days, the school needed four to five employees in the classroom to teach both I.L. and her classmates, including two paraprofessionals for I.L.

**Don't wait until this point! Contact your special education director to discuss what steps to take to move the student to a more restrictive placement.**







# Thank You! Any Questions?

**Tate Ball**

[Tate.Ball@tn.gov](mailto:Tate.Ball@tn.gov)

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