



Legal Lessons Learned 2016-2017

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DISCLAIMER

- The following is a message strongly encouraged (well, possibly not all of the wording) by our friendly DOJ attorney:
 - The information provided during this presentation/slide show is for informational purposes only and is not to be considered legal advice, but rather legal guidance. Which apparently means that you can't sue ODE for anything presented today.



Today's Approach

- We will discuss elements of specific cases as well as general trends;
- I am not going to “out” school districts in this type of forum. That’s unfair to all involved as well as counter-productive;
- My goal is to provide you information that you can use in your day-to-day activities rather than focus solely on potential agency/legal outcomes;
- We will be discussing state complaints almost exclusively, although I will touch on a couple of recent Supreme Court decisions as well.



ODE's Lessons

- Request for Response (RFR)
 - Communication with Complainants to clarify what the underlying issues actually are;
 - Helps to avoid “Additional Findings,” which is ultimately more fair and better for all involved.

More willing to dismiss inadequately written complaints.
Must specifically state an alleged IDEA violation.

Also combined allegations into common fact patterns in RFRs, Orders.



The Numbers

- Analyzed cases finalized either by dismissal or issuance of final order between July 1, 2016 and June 30, 2017;
- Total of thirty complaints;
- Twelve of these were dismissed – three by ODE for insufficiency, one by the Complainant, and eight that settled via mediation;
- Findings were made in eighteen complaints. In nine of these complaints, at least one allegation was either substantiated or partially substantiated;



Numbers (cont.)

- Seventy-nine total findings – fifteen allegations substantiated, nine allegations partially substantiated, fifty-five not substantiated;
- Highest numbers of allegations were for Parent Participation issues (eleven), IEP Implementation (ten), IEP Content (eight), Placement and IEP Review/Revision (seven), and Prior Written Notice (six).



Trends

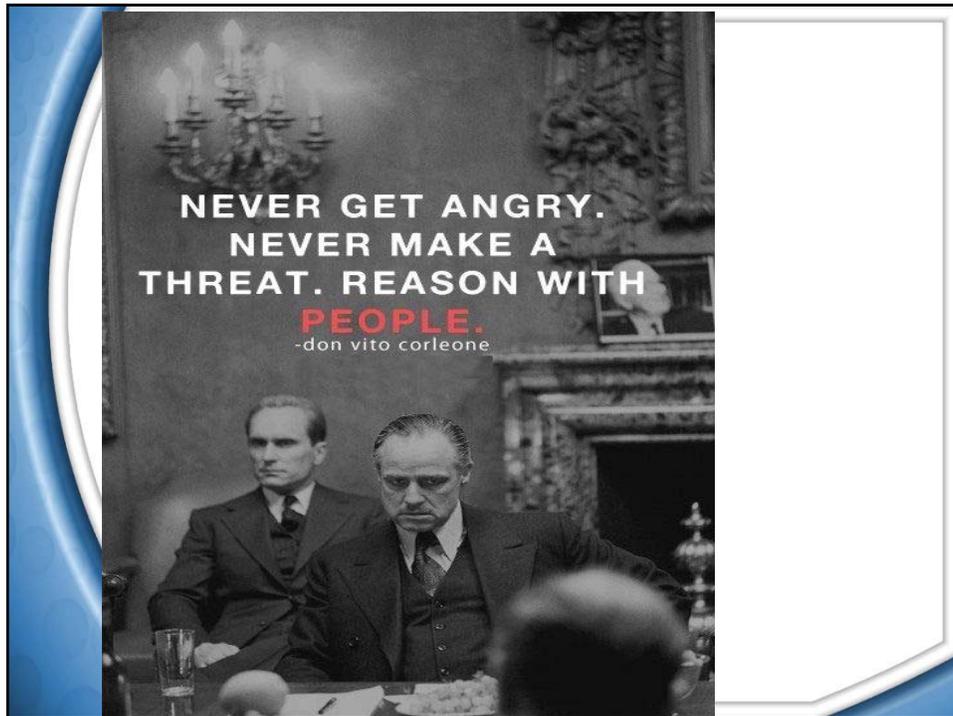
- Fewer purely procedural violations;
- Increased number of systemic complaints, often filed by previous employees;
- Increased activity, involvement of advocacy groups.



Parent Participation Issues

- Meeting time changed, parent not notified;
- Case manager and ten-year-old student make a deal that student won't attend specials – IEP team not involved, parent not informed;
- District fails to schedule IEP meeting despite numerous parent requests;
- Failure to consider additional information provided by parent;
- Parent signature FORGED on attendance sheet.





IEP Implementation

- Unless otherwise written, accommodations must always be provided. If student is to request the accommodation, state it that way on service page;
- Define specifically when supports are to be provided (eg. supervision before first bell, lunch, etc.);
- Make sure all staff members, including substitutes, are aware of all IEP requirements that they are involved in implementing, especially behavior plans;
- Implementation issues often arise when placement is “informally” changed.



IEP Content

- PLAAFP section of previous year's IEP simply copied/pasted into new IEP;
- Allowing students to identify their own strengths/weaknesses w/o input from other participants;
- Goals unrelated to areas of need;
- Vague and/or immeasurable goals;
- Transition goals unrelated to student's stated post-secondary plans;
- IEP so vague/incomplete that reader learns nothing from reading it.



Placement

- Agreement between teacher and student to not attend specials w/o Placement Team involvement, parental knowledge;
- Undocumented disciplinary removals;
- “Informal” placement changes, particularly around shortened school days;
- Substantially changing SDI, supports/services without Placement Team involvement;
- Placing students without basing the placement on the IEP;
- Capitulating to parent resistance when placing students.



Prior Written Notice

- Needs sufficient detail for Parent to be able to tell what's actually being changed when reading the notice;
- Must be provided to adult students;
- Must be provided each time district proposes to initiate or change identification, evaluation, placement, or provision of FAPE;
- Must be provided when district refuses to initiate/change any of these.



IEP Review/Revision

- Failure to adjust IEP to change in student's circumstances;
- Continued behavioral and/or academic struggles for long period with no adjustments made to IEP;
- Goals not revised over significant period of time;
- Outdated PLAAFP info;
- A lot of overlap with IEP content allegations;
- Nothing makes parents more suspicious than outdated information in IEPs.



Evaluation/Reevaluation

- Failure to reevaluate students that continue to struggle despite consistent implementation;
- Attendance issues – need to exclude any emotional/psychological barriers;
- When students struggle for prolonged periods of time and reevaluation isn't seriously considered, FAPE allegations are more likely to be substantiated (this is also true when IEPs aren't revised).



FAPE

- U.S. Supreme Court recently addressed FAPE in the *Endrew* case. The Court attempted to determine precisely how much educational benefit a student was required to receive, and ultimately said that, depending on whether or not the student is integrated into regular education classes, the student should either make sufficient progress to advance from grade to grade, or the student's IEP should be appropriately ambitious in light of the student's circumstances.



FAPE (2/4)

- Realistically, this decision doesn't impact state complaints much, as we're unlikely to substantiate a FAPE allegation without pretty substantial evidence that progress simply isn't occurring;
- Having said that, when students are making no educational progress, whatever the reason, it's impossible to say that they are receiving a free, appropriate public education;
- Recent findings of FAPE violations have generally been related to the inability of the school district to effectively manage behavior which impacts the student's learning.



FAPE (3/4)

- Generally, these findings have been made when student behavior warranted a reevaluation and/or a revision to the IEP and these measures weren't taken. In at least one instance, revisions to the IEP were made but were unsuccessful. Despite the district's efforts, the student still was not receiving a free, appropriate public education.



FAPE (4/4)

- FAPE is always the obligation of the school district. While IEP team consensus is the goal, when push comes to shove, the district has the responsibility of determining what is necessary to provide FAPE. Parents who disagree may utilize the dispute resolution processes if they choose to do so.



Other Issues

- Test protocols are NOT part of a student's educational record, as long as they don't contain student-specific information;
- ODE as a party – a state agency can be named in a state complaint. However, unless the local agency's failure is significant, state agency officials are given adequate notice of local agency's noncompliance, and state agency is afforded reasonable opportunity to compel local compliance, the state agency will not be found to be noncompliant.



2017 Legislative Session

- Senate Bill 20 – Modified Diploma – key takeaway – students needing additional transition services can still receive those once diploma requirements have been satisfied ONLY if the diploma is not actually conferred.
- Senate Bill 263 – a lot of confusion around this one – really changes nothing from a special education perspective – the IEP team/placement team still makes placement decisions. Parents do NOT have to consent to shortened school day if team decides to shorten the school day.



Helpful Suggestions

- Virtually every parent I speak with complains about a lack of communication. I recognize that many of these parents are wrong – the point is, parents that feel communication is good don't file complaints;
- Never forget that emails are public records. Consequently, don't make derogatory comments about parents and/or colleagues in email form;
- EVERY school district in the world, no matter how well-run, could have a successful complaint filed against them on any given day.



Suggestions (2/3)

- Special education is undoubtedly the hardest job in education, and whatever is in second place isn't even close. Do the best you can, accept that on occasion you'll probably get dinged, and move forward;
- Stipulated corrective action – has not been used since I've been here, but is apparently an option if a district wants to forego the investigation on specific issues – not sure what legal authority there is for this;
- If you want to know what ODE emphasizes, pay attention to corrective action, not findings.



Suggestions (3/3)

- If you have questions, please contact me. I'm not allowed to give legal advice, but I can provide legal guidance. Once you figure out what the difference is, please let me know . . .

