

**“Defensible” IEP Procedures: A Legal Perspective\*****Perry A. Zirkel<sup>†</sup>**

This article successively (a) highlights differences between the legal and professional lenses in relation to IDEA issues; (b) provide an update the predecessor analysis in 2017 of judicial case law on the frequency and outcomes for procedural denial of FAPE in the IEP process; and (c) discusses the implications of this updated legal analysis. The 100 court decisions, sampled based on the same procedure of the predecessor analysis for the more recent ten years, yielded 185 relevant rulings. The findings included that (a) the most frequent focus of the 185 relevant rulings was parental participation; (b) the percentage in favor of parents was slightly higher for the rulings specific to the IEP components of the IEP (30%) than those for IEP development, revision, and effectuation (25%), other parental participation (23%), and the members of the IEP team (22%); and (c) the overall outcomes predominated in favor of school districts on a 3:1 ratio for the rulings, which moderated to slightly less than a 2:1 ratio for decisions on a best-for-parents conflation procedure. The main message was to clearly differentiate legal requirements from professional best practice, so that the focus is on parental collaboration and student outcomes rather than on legal defensibility.

Special education in the United States is distinctively legalized, with the litigation under the Individuals of the Disabilities Education Act (IDEA) being the leading feature (e.g., Zirkel, 2023). Reflecting the trend of the “proceduralization” model (Kirp et al., 1974, p. 116), the IDEA is significantly procedural in its contents, including the various requirements specific to the formulation and contents of the child’s individualized education program (IEP). In its initial demarcation of the dimensions of the “free appropriate public education” (FAPE) core of the IDEA, the Supreme Court concluded that the extensive and elaborate procedural provisions of the Act “demonstrate[] the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP” (*Board of Education v. Rowley* 1982, p. 206). In light of the

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IDEA obligations being “largely procedural in nature,” the *Rowley* Court adopted a relatively relaxed substantive standard, with judicial deference to school authorities (pp. 206–207).

Based on the lower court progeny of *Rowley*, the 2004 amendments of the IDEA codified a two-part test for adjudication of procedural FAPE claims, requiring (1) whether the school district violated one or more procedural requirements of the IDEA, and (2) if so, whether the violation(s) (a) significantly impeded the parent’s opportunity for participation in the IEP process or (b) caused a substantive denial of FAPE to the child (§ 1415[f][3][E][ii]).

In turn, the Supreme Court’s decision in *Endrew F. v. Douglas County School District RE-1* (2017) refined the substantive standard for FAPE, requiring the IEP to be “reasonably calculated to enable a child to make *progress appropriate in light of the child’s circumstances*” [emphasis added] (p. 399). The only change from the *Rowley* formulation, which referred instead to educational benefit, was the italicized part. Moreover, the *Endrew F.* Court did not address, much less refine or elaborate, the two-part standard for procedural FAPE.

As previously pointed out both generally (e.g., Zirkel, 2020) and more specifically, including its treatment of procedural FAPE (e.g., Zirkel & Hetrick, 2017) and substantive FAPE (e.g., Zirkel, 2019b), the special education literature typically treats IDEA issues with insufficient accuracy and transparency. A primary problem is fusing and, thus, confusing legal analysis with professional advocacy.

For the IEP process, special education journal articles continue to promote their recommendations based at least in notable part on legal defensibility, yet without support aligning with the applicable procedural dimension of FAPE. For example, without citation to any legal source other than *Endrew F.*, Hedin and DeSpain (2018) proclaimed that “well-written annual goals ... and based on current and accurate [present levels of academic and functional

performance (PLAAFPs)] are the core of legally defensible IEPs” (p. 109). Similarly with negligible citation to case law on procedural FAPE, Yell et al. (2020) used the dual label of “educationally meaningful and legally sound IEPs” (p. 346) without any clear differentiation as to which of their recommendations are based on best-practice evidence and which are based on correspondingly careful legal analyses.

The purpose of this article is to reinforce the need for differentiation of legal requirements and professional recommendations by revisiting the judicial case law specific to procedural FAPE in the IEP process. More specifically, the successive parts of this article will (a) highlight differences between the legal and professional lenses in relation to IDEA issues; (b) update the predecessor analysis of judicial case law on the frequency and outcomes for procedural FAPE in the IEP process (Zirkel & Hetrick, 2017); and (c) discuss the implications of this updated legal analysis.

### **I. Comparing the Legal and Professional Lenses**

The legal lens includes a disciplined analysis of applicable case law. Examples of the various tenets of legal analysis include the following:

- identifying the holding, or combination of the issue and answer, as compared with the dicta, or incidental comments, in the decision
- following the vertical and horizontal dimensions of precedent, which generally accord negligible weight to administrative adjudications, such as IDEA due process hearings, as compared to court decisions
- conveying the difference between agency policy interpretations (e.g., OSEP/OSERS and state education agency guidance) and binding sources of law

- recognizing the judicial orientation toward, and classification, of procedural as compared to substantive issues
- tracking the history of the case to find and appropriately cite the latest applicable decision

Moreover, most legal scholarship assumes an advocacy or prescriptive perspective, whereas the occasional descriptive or empirical analysis makes clear its objective, or impartial, perspective (e.g., Zirkel & Skidmore, 2014, p. 569).

In contrast, the treatment of IDEA issues in the special education literature is often authored by academics in this professional field with limited, if any, legal training and instead an orientation to evidence-based best practice and related professional norms. Their treatment of legal issues is often far from careful in relation to the abovementioned legal tenets of conveying due recognition of critical differences, such as holding vs. dicta and procedural vs. substantive, following the legal weighting of precedent, accurately identifying directly representative case law, and making reasonably transparent the differentiation of professional advocacy and norms. For example, as the legal support for the importance of progress reporting/monitoring on IEP goals and objectives, Goran et al. (2020) relied on a single hearing officer decision, which was mis-cited, sixteen years old, and superseded by a court decision that clarified that other procedural deficiencies combined with this violation, which more specifically was “not any defect in progress reporting of annual goals” but, instead, “the failure to maintain records showing dates of mastery of benchmarks” (*Escambia County Board of Education v. Benton*, 2005, p. 1274 n.42).

The contrast between the legal and professional perspectives in relation to procedural FAPE is more clearly and comprehensively evident in the next part of this article. It starts with a

summary of the previous legal analysis that serves as the predecessor for this update. The review section continues, by way of contrast, with summarization of the subsequent corresponding professional literature.

## **II. Updating the Judicial Case Law for Procedural FAPE**

### **Review**

In the only prior systematic analysis of court decisions specific to the procedural FAPE for the IEP process, Zirkel and Hetrick (2017) first observed, for the purpose of comparison, that presentations and publications in special education have fused legal requirements with professional recommendations in identifying “fatal” or “disastrous” errors in the IEP process. They identified a limited line of articles in the special education literature that purported to identify leading procedural violations likely to be legally lethal, including failures to provide measurable goals in the IEP and to include all the mandated members on the IEP team. The cited basis, largely repeated from this cluster of authors’ previous publications, was a small and skewed sample of hearing officer and court decisions. In contrast, Zirkel and Hetrick analyzed the frequency and outcomes of a much more representative sample of more than one hundred court decisions for the ten-year period starting on July 1, 2005 specific to the procedural process for IEPs. They set forth a systematic typology of the IEP process consisting of the categories of (a) IEP components, (b) IEP team, (c) other parent participation, and (d) IEP development, review, and effectuation, each with cited subcategories based on the IDEA regulations. Based on the indexed topic specific to procedural FAPE in the SpecialEdConnection® legal database, their sample consisted of 132 court decisions, which encompassed 268 rulings. For frequency, they found that parent participation was the most common category for the rulings. For outcomes, they found that the percentage of rulings conclusively in favor of parents was slightly less than

20%, with their least favorable category being for IEP components. Upon conflating the rulings on a best-for-parents basis for procedural FAPE (i.e., classifying cases with more than one procedural FAPE ruling as being in favor of the parents if any of the rulings were in their favor), they found that parents prevailed in 25% of the 132 court decisions.

Nevertheless, in the more recent years, the special education literature has continued the emphasis on an IEP process that is “legally defensible.” The non-empirical articles have led the way. Yell (2019) continued the previous professional confusion by characterizing substantive side of FAPE, per the standard announced in *Endrew F.*, as including “measurable annual goals ... and procedures for monitoring progress.” (p. 58). Not long thereafter, Yell et al. (2020b) added PLAAFPs to these purported examples on the substantive side and explained that the goals need to be not just measurable but also “challenging, ambitious” so as not to be susceptible to denial of FAPE (p. 317). In a companion article, Yell et al. (2020a) not only reinforced these purported substantive priorities, but also identified on the other side (a) notice of the IEP meeting, (b) the absence of the general education teacher on the IEP team, and (c) predetermination as “very serious procedural errors that could lead a hearing officer or judge to rule the school had denied [the child] a FAPE.” (p. 315).

Consequently, for “the post-*Endrew F.* era,” Goran et al. (2020) focused on legal defensibility in terms of “IEP teams developing cohesive IEP plans that connect the present level of performance, goals, special education services, and methods of progress monitoring.” (p. 342). Similarly, after citing the substantive standard of *Endrew F.*, Harmon et al. (2020) professed without any specific legal or empirical support:

The only way teams can successfully [meet this standard] is through the development of comprehensive PLAAFP statements that incorporate

multiple sources of data, from a variety of reporters and assessment activities, and across academic achievement and functional performance domains relevant to the student's identified disability or needs.” (p. 331).

The more limited empirical research has followed suit. For example, Hott et al. (2021) analyzed a convenience sample of 126 IEPs from five rural school districts in the Southeast according to a coding instrument based on the common procedural IEP errors identified in two of the abovementioned Yell et al. articles. Focusing on the IEPs that indicated social, emotional, or behavioral needs, they found that only four of these 95 IEPs met all three of their selected criteria. Based on their “alarming” findings (p. 28), their conclusions included the following: “The value in discovering the substantial number of IEPs that would be considered out of compliance for substantive requirements, including the denial of FAPE, if challenged in a due process hearing or subsequent legal action cannot be understated.” (p. 33).

In their systematic synthesis of the limited peer-reviewed literature specific to IEP development and content for students with specific learning disabilities, McKenna et al. (2024) identified a few particular concerns, such as deficient PLAAPFs and goals. Their tentative implications for practice included “a greater [preservice] emphasis on mandates and procedures associated with IEP development” (p. 205).

A recent review of the offerings on the Internet reveals the emphasis on legal defensibility not only for the components of the IEP (e.g., Accessible Education, 2022; Course Sidekick, 2023; EdLaw Interactive (2024/2025); Pediatric Therapeutic Services, 2024; Prezi, 2019; Quizlet, n.d.; Speechpathology.com, 2024; Study.com, n.d.), but also for the IEP process more generally (e.g., Therapy Source, n.d.), which starts with evaluations (e.g., ED311, 2024).

## Method

The method was the same as that for the predecessor analysis (Zirkel & Hetrick, 2017), except that the period was the ten years since their ending date of July 1, 2015. The source was LRP's SpecialEdConnection® electronic database, specifically the court decisions listed within its topical index subcategory for FAPE, "Procedural Violations as Denial."

The first step was to apply the outer boundaries of Zirkel and Hetrick's organizing framework, which consists of the following categories:

- IEP Components (e.g., PLAAFPs, goals, special education/related services, transition services)
- IEP Team (e.g., parents, general education teacher, special education teacher, district representative)
- Other Parental Participation (e.g., IEP meeting notice, IEP copy, prior written notice, alternative methods)
- IEP Development, Revision, & Effectuation (e.g., evaluation/reevaluation, independent educational evaluation (IEE) consideration, annual timeline, IEP revision)

The various resulting exclusions included procedural FAPE cases resolved entirely on technical adjudicative grounds, such as standing (e.g., *L.M.P. v. School Board of Broward County*, 2018); cases limited to procedural rulings specific to the marginally overlapping issue of child find (e.g., *T.B. v. Prince George's County Board of Education*, 2018); cases focused on Section 504 rather than the IDEA (e.g., *A.C. v. Owen J. Roberts School District*, 2021); and cases limited to procedural rulings for the dispute resolution rather than IEP process (e.g., *I.R. v. Los Angeles Unified School District*, 2015). The final sample consisted of 100 court decisions.



The second step was to identify the most recent relevant decision for each of these cases. For this purpose, the Westlaw database served as a supplementary source via its history feature. Any subsequent decision that was limited to other issues, such as attorneys' fees, was not relevant.

The third step was the author's coding of the one or more procedural FAPE rulings in each decision on a spreadsheet in two ways: (a) placement in one of the four abovementioned categories, and (b) designation as to the step(s) and outcome of each ruling. The designation of the step, which was based on subdividing the first part of the IDEA's above-cited two-part standard and customizing the entry to fit the court rulings, consisted of the following successive options:

1a = the parent's asserted procedure was not a requirement of either IDEA or a corollary state law.

1b = assuming or deciding that the asserted procedure was legally required, the proof was preponderant that the district did not violate it

2 = the proof was preponderant that the violation did or did not result in the requisite loss to the student or parents

Per this customization, the automatic designation of the outcome for rulings at step 1a and/or 1b was in favor of the school district (designated as "SD"). Next, the outcome for rulings at step 2 was either in favor of the SD or the parents (designated as "P") depending on whether the court found the proof preponderant for the requisite loss. In some cases, the court relied on alternative steps for its ruling, which the coding entry indicated with a dual entry. For example, if the court concluded that the district did not violate the procedural requirement at issue or, even if it did, that said violation did not result in a loss to the parents or the student, the coding entry was 1b/2-

SD. The outcomes calculation for the four category subtotals and for the total sample counted such dual entry rulings on a fractional basis. For example, the entry of 1b/2-SD counted as .5 for each of the two abovementioned outcome designations of 1b and 2.

The tabulation did not include any rulings in the 100 court decisions for other issues, such as child find or disciplinary changes in placement, thus resulting in coding of 185 procedural FAPE rulings, which amounted to an average ratio of 1.9 rulings per decision. The author did not calculate interrater reliability because (a) the predecessor article already established the requisite high agreement level and (b) the author did all the coding for this update on his own. Since high interrater reliability may mean consistency for incorrect ratings, the key criterion is accuracy, for which the Appendix identifies all the author's entries for checking by interested readers.

The final step was analyzing the results to answer the following research questions (RQs):

RQ 1: What was the frequency of rulings for each of the four categories?

RQ 2: Within each category, which were the most frequent subcategories?

RQ3: What was the outcome distribution for each category?

RQ4: What was the overall outcome distribution for the 185 rulings and, on a conflated basis, the 100 court decisions? The conflation procedure for the cases with more than one procedural FAPE ruling was to classify the outcome on the parents' side if at least one ruling was in their favor.

## Findings

**RQ1.** The number and percentage of the 185 rulings for each of the four categories in this analysis were, in descending order of frequency, as follows:

- IEP Development, Review, & Effectuation – 60 rulings (32%)
- Other Parental Participation – 56 rulings (30%)
- IEP Components – 46 rulings (25%)
- IEP Team – 23 rulings (12%)

Overall, the only category that is at a distinctly lower level than the other is the one for IEP team membership.

**RQ2.** The two most frequent subcategories within each category were as follows:

- IEP Development, Review, & Effectuation – evaluation/reevaluation (n=24) and IEP revision (n=11)
- Other Parental Participation – predetermination (n=16) and prior written notice (n=10)
- IEP Components – transition services (n=10) and goals (n=8)
- IEP Team – parent (n=9) and general education teacher (n=8)

The other entries in each category were scattered, with many singletons and none amounting to more five except FBA/BIP (n=6.5).

Thus, on an overall basis, the frequency distribution across the categories ranges widely, with the distinctly leading subcategory being evaluation/reevaluation, which is the preliminary part of the IEP process.

**RQ3.** Table 1 presents the outcome distribution for each of the four categories.

**Table 1**

*Rulings at the Successive Steps of Procedural FAPE Analysis and, as a Result, for Each Party*

	In favor of SD			In favor of P
	1a-Not a requirement	1b-Not violated	2-Not requisite loss	2-Requisite loss
IEP Components (n=46)	13% (n=6)	24% (n=11)	33% (n=15)	30% (n=14)
IEP Team (n=23)	4% (n=1)	43% (n=10)	30% (n=7)	22% (n=5)
Other Parental Participation (n=56)	8% (n=4.5)	46% (n=26)	22% (n=12.5)	23% (n=13)
IEP Dev., Rev. & Effectuation (n=60)	15% (n=9)	20% (n=12)	40% (n=24)	25% (n=15)

*Note.* The n's that are not whole numbers are attributable to the approximate division for the rulings based on an occasional combination of subcategories for a single entry.

Review of Table 1 reveals that the rulings in favor of parents approximated a quarter of the rulings for each category except for a moderately higher parent-favorable fraction for IEP components.

**RQ4.** Table 2 provides the overall outcomes distribution for the rulings and, on a best-for-parents basis, the court decisions for procedural FAPE.

**Table 2***Overall Outcomes Distribution for Procedural FAPE Rulings and Cases*

	1a-Not a requirement	1b-Not violated	2-Not requisite loss	2-Requisite loss
Rulings (n=185)	11%	32%	32%	25%
Cases (n=100)	64%			36%

*Note.* The conflation procedure was workable for rulings, but not for cases.

Table 2 shows that 43% of the rulings did not reach step 2, and parents were successful in less than half of the rulings that did reach step 2. Overall, parents succeeded in approximately a quarter of the rulings and, on a favorable conflation basis, in slightly more than a third of the cases for procedural FAPE.

## Discussion

### Prefatory Delimitations

The delimitations of this analysis merit identification as the framework of the interpretation of its major findings. First, it is limited to court decisions, which set the precedents for hearing officer decisions. The analysis does not include the preceding levels of the “litigation iceberg” (e.g., Zirkel, 2023, p. 311), including settlements and withdrawals/abandonments. Moreover, within the adjudication arena, the sample is limited to the court decisions appearing within the aforementioned LRP index topic, which are only approximately representative of the total population of procedural FAPE judicial case law.

Second, because the foregoing sources (e.g., Hott et al., 2021, p. 33; Yell et al., 2020a, p. 315) refer to variants of legal defensibility in terms of adjudication, the analysis does not extend

to the alternative decisional dispute resolution mechanism under the IDEA—the state complaint process. The national activity for this alternate mechanism tends to be higher and more parent-favorable than for the corresponding administrative step of IDEA adjudication, the due process hearing (e.g., CADRE, 2023; Zirkel, 2017). However, the amount of both the special education literature and the judicial case law is relatively negligible for the state complaint process.

Third, the various steps in the analysis, such as the formulation and application of the case exclusions, procedural FAPE typology, and multi-step coding framework are based on the author's expertise and diligence. Constructive criticism, including correction of ruling entries in the Appendix, are welcome as part of the scholarly process for achieving increasingly accurate and comprehensive information for the various stakeholders in the field of special and general education.

Fourth, based on the same legal lens, the analysis is limited to the procedural requirements of the IEP process. Thus, it does not cover the procedural requirements of various other aspects of the IDEA, including not only dispute resolution but also child find, IEEs at public expense, extended school year, and disciplinary changes in placement. Moreover, it does not address the corresponding frequency and outcomes of substantive FAPE before and after *Endrew F.*, which are the subject of other analyses (e.g., Connolly & Wasserman, 2021; Moran, 2020; Zirkel, 2019a).

### **Relation to Predecessor Analysis**

Within these delimitations, the findings from this systematic analysis of recent judicial case law specific to procedural requirements of the IEP process are largely consistent with those of the predecessor analysis of the prior decade (Zirkel & Hetrick, 2017). For the frequency among the four categories, the order of the top three changed, with IEP Development, Revision,

and Effectuation moving into first place, but the IEP Team category remained in its distinctly lower position. Similarly, the changes were limited for the frequency distribution within each category. For example, evaluation/ reevaluation moved from second to first place; predetermination remained at a relatively high incidence and low success rate for parents; and parental participation, which consisted of combining the parents' membership on the IEP team with the subcategories in the "Other Parental Participation" category, retained its primacy. For the outcomes per category, the proportion of rulings in favor of parents was basically the same except for IEP Components, which moved from the lowest to the highest minority position. Overall, the outcomes distribution on a per ruling and a per case basis for procedural FAPE outcomes continued to be skewed in favor of school districts, although on a slightly less pronounced basis.

### **Relation to Predominant Special Education Literature**

More significantly, this largely continuing pattern of the judicial case law raises serious questions about the limited but prevailing treatment of procedural FAPE in the special education literature. First, the general division of procedural and substantive aspects of the IEP process, specifically focused on IEP components, in the special education literature shows the inadvertent legal distortion of the undifferentiated professional lens. More specifically, courts rather predictably and consistently view all the IEP components, with the limited and partial exception of goals, as procedural. Consequently, judicial rulings for these components and the other parts of the IEP process are based on Congressionally mandated two-part test, which reserves *Endrew F.* for the limited role of the requisite loss to the student rather than the parents for the rulings that reach step 2. For goals, the courts tend to treat measurability on the procedural side (e.g.,

*Colonial School District v. G.K.*, 2019, p. 197) and the sufficiency or necessity on the substantive side (e.g., *C.W. v. City School District of New York*, 2016, p. 134).

In contrast, reflecting the combination without differentiation of the professional and legal lenses, the special education literature tends to provide a legally skewed view, characterizing PLAAPFs, progress reporting/monitoring, and measurable goals as “examples of substantive violations” (e.g., Yell et al., 2020b). As a result, the tendency is to directly connect such issues to *Endrew F.* (e.g., Yell, 2019, p. 58) in contrast with its much more limited role under the distinctly different two-part procedural FAPE analysis required for hearing officers and courts. There may be good reasons for the professional purpose of evidence-based best practices for improving student outcomes to treat PLAAPF and various other IEP components as substantive, but not without differentiating it from what courts would find “legally defensible.” Upon differentiation with careful cited support of the “shall” of legal requirements, the “should” of professional recommendations, with equally careful cited support, merits special emphasis and deference in light of special education authors’ particular educational expertise.

Second, beyond the procedural v. substantive characterization, to the unspecified extent that special education publications and presentations base their prescriptions on legal defensibility, they emphasize the components of the IEP as compared with the other parts of the IEP process. In contrast, this systematic analysis of the applicable judicial rulings reveals that although the IEP Components category accounted for a notable proportion (25%) of the rulings, it ranked third among the four categories of this analysis. Moreover, as Table 1 shows, even though IEP Components had a more favorable success rate for parents than the other three categories, its outcomes balance of 30% v. 70% still provides rather wide latitude for district defensibility. Finally, the level of success is further limited to the extent that in at least a few of



the favorable rulings either did not include a remedy (e.g., *E.M. v Poway Unified School District*, 2020) or provided only a purely prospective order rather than retrospective relief, such as compensatory education (e.g., *A.W. v. Loudon County School District*, 2022).

Third, within this IEP Components category, the professional literature's prioritization of PLAAFPs, goals, and progress reporting/monitoring for legal vulnerability is clearly contrary to both the frequency and outcomes of the courts' continuing rulings. More specifically, PLAAFPs and progress reporting/monitoring each account for less than only three (1.6%) of the rulings, and only one (17%) of these six rulings was favor of the parents.

Moreover, for its high priority on goals, the aforementioned professional literature has prescribed two criteria for legal defensibility—that the goals be measurable and ambitious (e.g., Yell et al., 2020b, p. 317). Yet, only a negligible number of the rulings focused on measurability, and those few decisions tended not to require objective precision at step 1b or, alternatively, at step 2 (e.g., *Colonial School District v. G.K.*, 2019). Additionally, only one of the procedural FAPE rulings was specific to ambitious goals, only addressing it for the second step of student substantive loss and concluding that the goals were “reasonably ambitious” even though not aiming for grade-level advancement (*R.F. v. Cecil County Public Schools*, 2019, p. 252). One other of the 100 cases included a ruling on ambitious goals but as an entirely separate substantive issue. This court decision similarly clarified that the *Endrew F.* reference was to “appropriately ambitious” in the context of aiming for less than the *Rowley* indicator for advancement from grade to grade (*Middleton v. District of Columbia*, 2018, p. 140). Indeed, in that case the court agreed with the parents' argument that the goals were too lofty to be appropriately ambitious in light of the child's individual circumstances.

Fourth, for aspects of the IEP process beyond the IEP Components category, the special education literature's prioritization of timely notice of the IEP meeting, absence of the general education teacher, and predetermination as the most susceptible to legal vulnerability is clearly questionable. The rulings for the meeting notice requirement were rare. Although the general education teacher and predetermination were among the top high-frequency subcategories, the rulings were particularly skewed in favor of districts. Specifically for the eight rulings specific to the general education teacher's membership on the IEP team, seven (88%) were in favor of the district. For the 16 predetermination, 13 (81%) were in favor of districts. The longstanding judicial standard for predetermination is showing that the IEP team failed to come to the IEP meeting with an open mind, effectively amounting to refusal to consider the parents' proposed alternatives (e.g., *Doyle v. Arlington County School Board*, 1992, p. 1262). Although it is not at all uncommon for parents to perceive violation of this standard, they often fail at this first part of procedural FAPE analysis. The leading reasons for this lack of success at this first hurdle are the adjudicative requirements for an impartial perspective and preponderant proof, even though establishing parental loss is no problem in predetermination claims that reach step 2.

Finally, if prioritization is necessary, the findings here, reinforcing those of the predecessor case law analysis, point to a dual focus for primary attention. Based on this legal lens, one of these overlapping top priorities is parental participation. The combination of the required parental membership in the IEP Team category and the Other Parental Participation category, which also inevitably overlap, accounts for the highest number of rulings, and the outcomes tend to be less district-favorable due to the role of parental participation in both parts of the IDEA's prescribed adjudicative analysis for procedural FAPE. More specifically, any violation at step 1 can result rather directly in the requisite step 2 parental-loss alternative, even

if not in student substantive loss, for denial of FAPE, thus increasing the likelihood of a ruling for P, which equates to being not legally defensible.

The other leading priority is student progress. More specifically, based on the applicable two-part analysis, any violation that does not result in the loss of parental participation will be a FAPE ruling for P only upon preponderant proof a substantive student loss. Thus, a district's effectuation of an effective calculation or, better yet, actual realization of appropriate progress effectively excuses or supersedes the procedural violations at issue.

### **Conclusion**

In short, the lessons for special education scholarship and practice are twofold. First, to the extent that special education experts ascribe to both legal defensibility and professional best practice, they should carefully differentiate these two levels. For the regrettably rare examples in the special education literature to date, see Collins and Zirkel's (2017) treatment of FBAs/BIPs and Zirkel and Yell's (2024) treatment of progress reporting/monitoring.

Second, to the extent that limited resources require choices, the special education literature's priorities for the IEP process should be predicated on evidence-based best practice, not the odds of legal defensibility. Although legal compliance in the context of not only adjudication but also the state complaint process and the other enforcement mechanisms of the state education agencies' obligation of general supervision merits attention, it should not be the primary focus. Instead, the higher level is that of professional norms, including grounding in research, advocacy for students and partnership with parents. The bottom line should be to focus on collaborating rather than litigating and, ultimately, on student outcomes, not judicial outcomes.

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**Appendix: Compilation of the 100 Court Decisions and the Coding Entries for Each One**

s a general introduction, here is a summary of the organization of this Appendix by columns, then rows, and then entries. The columns are as follows:

- 1<sup>st</sup> column: case name with more concise abbreviations than conventional legal style
- 2<sup>nd</sup> column: citation in SpecialEdConnection® database, except that for similar space-saving abbreviation the hyphen represents “LRP”
- Columns A–D: the four successive categories of the IEP process, per Zirkel and Hetrick (2017)
- Comments column: clarifications or explanation of entries, with cross reference to the applicable category (A–D)

he rows, which are in reverse chronological order, contain the entries for the relevant rulings in each court decision.

he entries consist of two successive parts:

- the specific step (1a, 1b, or 2) in the above-specified framework for procedural FAPE rulings, and
- a letter for whether the ruling was in favor of the parents (P) or school district (SD)

he acronyms are listed in the Notes at the bottom of the Appendix.

Case Name	LRP Citation	A IEP Components	B IEP Team	C Other Parent Partic.	D IEP Dev., Rev., & Effectuation	Comments
JRB v. Quakertown CSD	125-13111			2-SD		lack of PWN of trial placement but no harm to parent part.
Luo v. Owen J. Roberts SD	124-41906			1b-SD	1/2-SD	D-IEE consideration & participation by phone (w/o consent)
Cockrell v. Bessemer City BOE	124-35205	2-P+				A-goals+progress reports ( <i>Escambia Cnty. BOE v. Benton</i> )→remedy?
JB v. Kyrene El. SD	124-30919			2-SD	1a[-SD]+	C-PWN; D-eval.+IEP rev.
LB v. San Diego USD	124-30637	1a[-SD]		1a[-SD]+	1a[-SD]+; 1b[-SD]; 2-SD	A-placement offer; C-predeterm.+PWN; D-IEP rev.+eval.; IEE; eval delay
<del>JRB v. Quakertown CSD</del>	<del>124-24449</del>			<del>2-SD+</del>		<del>C-PWN+parental part.</del> [DELETE THIS ROW]
AAA v. Clark Cnty SD	124-24303				2-SD	D-IEP rev.
PH v. Compton USD	124-28583				2-P	D-delayed initial IEP mtg. (transfer)→CE
KK-M v. N.J. DOE	124-14958				2-SD	D-reeval. delay
LE v. Methacton SD	124-13322	1b[-SD]+			2-P	A-goals+PLAAFPs; D-reeval. delay→CE
KO v. San Dieguito HSD	124-13134			2-P		C-predeterm.→TR (after steps)
Newport Mesa USD v. DA	124-10386				1a[-SD]; 2-SD	D-IEP rev.; reeval. delay
Etiwanda SD v. DP	124-1299	2-P	2-P			A-goals (marginal~subst. FAPE); B-parent abs→CE [SD filed]
Zion M v. Upper Darby SD	123-30277				2-SD	D-eval. delay (marginal~child find)
Davis v. Banks	123-29915		2-P+*			B-parent abs.+physician abs. (cumulative)→TR (after steps)
Cooper v. SC of Hammond	123-29645	1b[-SD]		2-SD	1b[-SD]+	A-transition serv.; C-IEP copy; D-eval.+delay upon transfer

Case Name	LRP Citation	A IEP Components	B IEP Team	C Other Parent Partic.	D IEP Dev., Rev., & Effectuation	Comments
Luo v. Owen J. Roberts SD	123-27139				2-SD	D-eval. (marginal)
Thomason v. Porter	123-5407			1b/2-SD; 1a[-SD];1b[SD]	1a/2-SD	C-IEP mtg. notice; PWN; mutually agreeable time; D-IEP rev.
JD v. Rye Neck SD	123-4977			1b[-SD]		C-predeterm.
JT v. D.C. II	123-35107				2-SD	D-placement change before IEP mtg.
Plotkin v. Montg'y Cnty PS	123-33167				2-SD	D-implementation as procedural (marginal)
MG v. McKnight	123-3369				2-P	D-delayed IEP→partial TR (less than half)
DO v. Escondido Union SD	123-3363				1a/2-SD	D-eval. (marginal)
Mandeville v. DOE Haw.	123-15	1a/1b[-SD]		1b[-SD]+		A-transition from priv. sch.; C-meaningful part.; predeterm
AW v. Loudon Cnty SD	122-39097	1b[-SD]	2-P		2-SD; 2-P	A-progress monitoring.; B-parent abs.; D-IEP rev.; unqualif. T →PPO, but no CE
Wade v. D.C. II	122-46479			2-SD		C-PWN
OA v. Orcutt Union SD	122-23661			1b[-SD]	1b[-SD]; 2-P	C-info. for mtg.; D-eval. (2 diff. IEPs)→CE
JT v. D.C. I	122-2545			2-SD		C-even if site selection
CM v. Rutherford Cnty Schs	122-11339		1b[-SD]	1b[-SD]+		B-eval.-eval. interp. member; C-predeterm.+requested info.
BD v. D.C.	121-42573		2-P	1a/1b[-SD]		B-parent abs.→remand for CE; C-predeterm. (site selection)
Day v. Cedar Rapids SD	121-31807			2-SD		C-unilateral am.
Wade v. D.C. I	121-28632		2-SD			B-parent abs.
Thurman G v. Sweetwater...	121-25687	1b[-SD]		1b[-SD]		A-progress reports; C-PWN; D-eval.
JKG v. Wissahickon SD	121-11132	2-SD				A-FBA
Davis v. Carranza	121-10144			2-SD		C-PWN
Montg'y Cnty IU 23 v. AF	120-38706	2-P				A-behavioral support→TR (after steps)
Glass v. D.C.	120-36645				2-P	D-delay upon transfer in→remand for CE
William V v. Copperas Cove ISD	120-27698				1a[-SD]	D-assistive tech. eval. (marginal)
GS v. Pleasantville UFSD	120-23646			1b[-SD]		C-predeterm.
Butte SD No. 1 v. CS	120-16645	1a[-SD]; 2-SD	2-SD		1a/2-SD	A-FBA; transition serv.; B-surrogate upon reaching 18; D-eval.
Sanchez v. D.C.	120-15884			2-SD		C-even if placement change
AA v. Northside ISD	120-9212			1a/1b[-SD]	1b[-SD]	C-PWN-change in schools & rms.; D-eval. delays
EM v. Poway USD	120-1720	2-P				A-placement offer→remedy?
KB v. Racine USD	119-44335			1b[-SD]		C-amorphous claim
JLN v. Grossmont Un'nHSD	119-38384	2-SD+				A-PLAAFPs+goals
CW v. Denver Cnty SD	119-37315	2-P				A-"location" (here none)→remand for remedy
GW v. Boulder Valley SD	119-36508			1b[-SD]	2-SD	C-predeterm.; D-reeval.

Case Name	LRP Citation	A IEP Components	B IEP Team	C Other Parent Partic.	D IEP Dev., Rev., & Effectuation	Comments
Price v. Commw Charter Acad-Cyber Sch	119-35616	1a[-SD]; 1b[-SD]	1b[-SD]; 1a/2-SD			A-med. diagnoses; PLAAFPs; B-parent abs.-parent's choice; gen. ed. T
Pangerl v. Peoria USD	119-29681	2-SD	1b[-SD]			A-transition serv.; B-finished IEP mtg. w/o parents
J.G. v. Haw. DOE	119-24861			1b[-SD]		C-predeterm.
DOE Haw. v. LS	119-12658	1a/2-SD; 2-P				A-transition (between schools); BIP→remand for reduction of TR based on last step
R.F. v. Cecil Cnty PS	119-11105			2-SD		C-unilateral am.
Colonial SD v. GK	119-4405	1b/2-SD				A-goals
Forest Grove SD v. Student	118-48402			1b[-SD]++	2-P; 1b[-SD]	C-email lim.+IEP mtg. agenda+PWN; D-IEP rev. (2 IEPs)→remedies?
YN v. BOE of Harrison ...	118-43536				2-SD	D-eval.
ES v. Conejo Valley USD	118-31548	2-P				A-FBA→CE
Middleton v. D.C.	118-24152	1b[-SD]		2-P		A-transition serv.; C-placement change→ remand for CE
Howard G. v. Haw. DOE	118-21903			2-P+		C-limited+incorrect info (overlap with B)→TR (after steps)
Mr. P v. W. Hartford BOE	118-11253	2-SD	1b[-SD]	2-SD+	1b/2-SD; 1b[-SD]	A-inaccurate or incomplete IEP; B-gen. ed. T; C-IEP copy+ staff qualif.; D-eval.; consider IEE
Pavelko v. D.C.	118-5848			1b[-SD]		C-meaningful part. (another overlap with B)
SD of Phila. v. Kirsch	118-4769				2-P	D-no IEP at start of yr.→TR (after steps)
Denny v. Bertha-Hewit ...	117-41954	1a[-SD]	2-SD			A-behavioral goal; B-gen. ed. T
Tamalpais Un'n HSD v. DW	117-41035	2-P			2-P	A-rel. serv. specif.→TR (after steps); D-eval.→IEE
Rachel H. v. DOE Haw.	117-36134	1b[-SD]				A-"location"
JR v. Smith	117-34578			1b[-SD]		C-predeterm.
Hack v. Deer Valley SD	117-28044				1a/2-SD; 2-P	D-delayed IEP mtg.; no IEP @ start of yr.→remand for remedy
SH v. Mount Diablo USD	117-26021	2-P	2-P			A-rel. services specif.→CE, not TR; B-gen. ed. T→PPO
RB v. NYC DOE	117-16967	2-SD				A-transition serv. (in-person assessment)
MC v. Antelope Valley SD	117-21748	2-P		2-P		A-assistive tech. specification; C-unilateral am.+→CE+PPO
SGW v. Eugene SD	117-9075	2-P+				A-goals (omitted)+transition serv.→CE
JB v. NYC DOE	117-9463			1a/1b[-SD]		C-private school info., not visit
JS v. NYC DOE	117-6450			1b[-SD]		C-predeterm.
MS v. Lake Elsinore USD	117-6458				1a[-SD]	D-reeval.
PC v. Rye City SD	117-4653	1b/2-SD				A-goals (repeated/omitted)
Luo v. Baldwin UFSD	117-3790		1b[-SD]			B-parent abs. [marginal-collateral estoppel]
JE v. NYC DOE	117-3354			2-P		C-predeterm.→TR (after remaining steps)
DOE Haw. v. Leo W	117-11				2-SD	D-reeval.

Case Name	LRP Citation	A IEP Components	B IEP Team	C Other Parent Partic.	D IEP Dev., Rev., & Effectuation	Comments
Mrs. J v. Portland PS	116-50803			1b[-SD]		C-predeterm.
ZZ v. Pittsburgh PSD	116-50377				2-SD	D-delayed IEP (P contributed)
PM v. DOE Haw.	116-45826		1b[-SD]			B-absence of biological father but ample oppty. (overlap w. C)
EM v. NYC DOE	116-42225			2-P		C-predeterm.→TR (+separate, subst. denial and after steps)
SY v. NYC DOE	116-42811	1a/2-SD; 2-SD		2-SD; 2-P++	2-SD+	A-FBA; parent counseling; C-eval. info.; PWN++→TR (after steps); D-reeval.+IEP rev.
LB v. NYC DOE	116-41742	1b/2-SD	1b/2-SD	1b[-SD]	1b[-SD]	A-transition serv.; B-rel. serv. providers; C-full opp'ty; D-eval.
YA v. NYC DOE	117-220	1b[-SD]	1b[-SD]; 2-SD	2-P	2-P++	A-FBA; B-gen. ed. T; sch. psychologist; C-failure to provide interpreter; D-lack of translated PSN++→PPO (new IEP)
MM v. NYC DOE	116-31444	2-SD			2-SD	A-transition serv.; D-reeval.
Gibson v. Forest Hills Local SD BOE	116-30318	2-P	2-SD			A-transition serv. (preferences+goals combined); B-student for transition serv. [→CE – implicitly upheld dist. ct.]
EE v. Tuscaloosa	116-2804				2-SD	D-eval. (marginal-eligibility)
Abdella v. Folsom Cordova USD [R&R]	116-26448				2-SD; 1b/2-SD+	D-eval. info. (records); IEP delay+failure to eval.
LO v. NYC DOE	116-21295	2-SD; 2-SD/2-P*; 1a/2-SD			2-SD	A-parent counseling; *=FBA/BIP, rel. serv. specifications; goals [cumulative for P]→remand for remedy; D-eval. info.
Brown v. D.C.	116-14515	2-P				A-LRE discussion and statement→TR+PPO
CW v. NYC DOE	116-12738	2-SD	1b[SD]; 2-SD		1b-SD	A-transition serv.; B-gen. ed. T; student (transition); D-eval.
JC v. NYC DOE	116-10230	2-SD+				A-FBA+parent counseling (state law)
TK v. NYC DOE	116-2393			2-P		C-refusal to discuss bullying→TR (after steps)
AL v. Jackson Cnty SB	115-58654		1b[-SD]			B-parent abs. (de facto refusal)
ZR v. Oak Park USD	115-52876	1b[-SD]	1b/2-SD			A-goals (marginal); B-gen. ed. T
FB v. NYC DOE	115-45008			1b[-SD]; 2-P		C-predeterm.; placement info→TR (after steps)
LaGue v. D.C.	115-44215				2-P	D-IEP rev.→remand for TR determination
AT v. Fife SD	115-43187				1b[-SD]	D-delay upon transfer in (only if “appropriate”)
AA v. NYC DOE	115-40880				2-SD	D-reeval.
AP v. NYC DOE	115-34814		1a/2-SD	1b[-SD]		B-gen. ed. T; C-predeterm.
Leggett v. D.C.	115-30253				2-P	D-delayed IEP→TR (after remaining steps)

es. The acronyms above that are not already provided in the text of this article are, in alphabetical order, as follows: BOE=board of education; CE=compensatory education; E=department of education; PPO=purely prospective order; PS=public schools; PSN=procedural safeguards notice; PWN=prior written notice; SB=school board; SD=school district; T=teacher; and TR=tuition reimbursement. Other symbols include “/” for rulings based on alternative steps; “+” for additional rulings with the same outcome entry; and “&” for combined or cumulative violations; and → for remedy or lack of remedy for ruling(s) in favor of P.