

LegalWatch

Your guide to court, federal agency and state administrative rulings on special education issues

Topic: Procedural Violations

Issue: When do procedural violations deny FAPE?

Background . . . A district's procedural violations of the IDEA will often not result in a denial of FAPE to students with disability. However, in some instances procedural violations alone or cumulatively can cause a denial of FAPE. While cases involving procedural violations are usually very fact-specific. Generally, a district can deny a student FAPE where procedural inadequacies result in the loss of educational opportunity or benefits, or seriously infringe upon the parents' opportunity to meaningfully participate in the IEP process.

COURT/AGENCY	CITATION	SUMMARY
9th Cir.	<i>Amanda J. v. Clark County Sch. Dist.</i> , 35 IDELR 65 (9th Cir. 2001)	<u>FAPE denied.</u> The district's failure to furnish parents with copies of evaluation reports for their daughter violated the procedural requirements of the IDEA and denied the student FAPE. The reports indicated the possibility of autism and the need for further psychiatric testing.
10th Cir.	<i>Logue ex rel. Logue v. Unified Sch. Dist. No. 512</i> , 28 IDELR 609 (10th Cir. 1998)	<u>Student received FAPE.</u> The district complied with the procedural requirements of the IDEA when it designed a new IEP for a student with a hearing impairment. The parents were given notice of the IEP meetings, informed of the student's progress and the results of his evaluations, and the district considered their request for an oral communication method of instruction. The court noted that even if a procedural violation occurred, the parents failed to establish the violation resulted in educational harm.
9th Cir.	<i>Bend-Lapine Sch. Dist., Plaintiff-Appellee v. DW, parent of TW</i> , 28 IDELR 734 (9th Cir. 1998)	<u>Student received FAPE.</u> There was no evidence most of the claimed procedural violations occurred. The IEPs contained all of the required elements, the parents were included in all aspects of the IEP formulation, and the district was not required to "cooperate" with the parents when deciding what methodology was to be used. The only alleged procedural violation supported by the evidence was the district's failure to furnish the student with all of the

		<p>services stated in the IEPs. However, that failure did not result in the denial of a FAPE because the student was not harmed as a result, and some of the implementation problems were not the district's fault.</p>
9th Cir.	<p><i>W.G. ex rel. R.G. v. Board of Trustees of Target Range Sch. Dist. No. 23</i>, 18 IDELR 1019 (9th Cir. 1992)</p>	<p><u>FAPE denied</u>. The district's failure to ensure the attendance of all necessary parties at an IEP meeting for a student with a learning disability resulted in the development of an incomplete and insufficient IEP, in violation of the school district's affirmative duties under the IDEA. A procedural violation which results in an inadequate IEP, such as in this case, must be deemed a denial of FAPE, and the student's parents were entitled to reimbursement of the costs of private tutoring obtained after they rejected the IEP.</p>
6th Cir.	<p><i>Doe by Doe v. Defendant I</i>, 16 IDELR 930 (6th Cir. 1990)</p>	<p><u>Student received FAPE</u>. The district's proposed IEP for a student with LD contained several procedural defects. The IEP failed to state the student's present level of educational performance and failed to specify appropriate criteria for determining achievement of his educational objectives. These defects were not sufficient, however, to render the IEP inappropriate because both the district and the parents were aware of the relevant information.</p>
4th Cir.	<p><i>Spielberg by Spielberg v. Henrico County Pub. Schs.</i>, 441 IDELR 178 (4th Cir. 1988)</p>	<p><u>FAPE denied</u>. A district's decision to transfer a child from a private to public school may not occur before the IEP has been written, with parental participation. Where a district first determines where it intends to place a student and then develops an IEP to carry out its decision, the resulting procedural violation is tantamount to a violation of its obligation to provide the student with FAPE.</p>
D. Conn.	<p><i>W.A. and M.A. ex rel. W.A. v. Pascarella</i>, 35 IDELR 91 (D. Conn. 2001).</p>	<p><u>Student received FAPE</u>. The district did not violate the IDEA when its board failed to implement an IEP team's recommendation for a full-time special education teacher in the student's fifth-grade classroom. The student received FAPE without the additional teacher. Although the IEP team suggested that the district add a special education teacher in the student's classroom, it was not obligated to revise the</p>

		<p>student's IEP to require the services of another teacher. Therefore, the team's deferral to the board's decision not to hire the teacher was not a procedural violation of the IDEA.</p>
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