



Special Education Law Update

TEL: 661.636.4830
FAX: 661.636.4843
E-mail: sls@kern.org
www.schoolslegalservice.org

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ADDRESS COOL FACTOR OF iPADS VS. ACTUAL USE AS MEANS FOR INTERACTION

In a recent decision, the California Office of Administrative Hearings (“OAH”) held that despite the cool factor of an iPad, a school district did not have to permit a nine-year old with autism to use an iPad to initiate social interactions with his peers. (Carlsbad Unified School District, OAH Case No. 2011120317.) Student’s parents claimed that a school district’s refusal to incorporate a student’s use of an iPad denied him a free and appropriate public education (“FAPE”). The parents specifically claimed that the social skills goals included in their son’s individualized education program (“IEP”) were not appropriate because they did not incorporate the student’s use of an iPad. The school district determined that the student’s use of social scripts were more accessible and less distracting.

The student was a nine-year old with autism who, in his earlier years when he was nonverbal, used an iPad as a sound generation device. By third grade, the child was verbal and no longer used his iPad for its earlier purpose. Instead, he used it to display numerous videos and pictures of himself engaged in exciting activities to attract the attention of peers. The district was able to demonstrate that the student’s use of scripts could be a more effective means of working on social skills and was less distracting and more accessible than the iPad, which had to be stored in the student’s backpack for safety. The iPad presented opportunities for the student to talk about himself and engage in a monologue whereas the scripts prepared him to navigate more complex two-way conversations. Therefore, the district’s social skills development goal was found to be appropriate for the child and its decision of the district to use scripts as the more effective methodology was upheld.

Under the Individuals with Disabilities Education Act (“IDEA”) school districts are not required to adopt the parents’ preferred teaching methodology, or even to designate a methodology in the goals in the IEP. The choice of methodology falls within the sole discretion of the school district, and the United States Department of Education has stated that there is nothing in the IDEA that requires an IEP to include specific instructional methodologies. (71 Fed. Reg. 46,665 (2006).) However, the IDEA requires an IEP to include "a statement of the special education, related

services and supplementary aids and services, based on *peer-reviewed research to the extent practicable*, to be provided to the child." (34 CFR 300.320 (a)(4).) The chosen methodology by the school district should be based on peer-reviewed research to the extent that it is possible, given the availability of peer-reviewed research.

In this matter, parents' assertion that the student's social skills goals required the use of an iPad was not supported by the law. If the IEP team in this case did specifically state that the methodology chosen would be the use of the iPad, the school district would have been required to implement the goal in that manner.

The decision of whether to include a specific methodology in a child's IEP belongs to the IEP team. If the IEP team finds that specific instructional methods are *necessary* for the child to receive FAPE, the IEP should specify the instructional methods in the IEP. (71 Fed. Reg. 46,665 (2006).) Districts should note, however, that educators will have greater flexibility if the IEP does not require the use of a specific methodology. Typically, an IEP lacks specificity regarding methodology so that different methods and techniques can be used to meet a child's specific educational needs.

While a district can use any methodology that allows a child with a disability to receive FAPE, it cannot predetermine which methodology it will use. A district may find itself liable for IDEA violations if it adopts an official or unofficial policy of refusing to implement certain methodologies.

It is important to note that a strategy/methodology that may have worked in the past for a student may not be appropriate for the child at the time the IEP team is addressing the needs of the student. When an IEP is developed, reviewed or modified, the IEP team determines the needs of a child *at the time* the IEP is developed or modified. An IEP, therefore, is a snapshot and not a retrospective, and must take into account what was objectively reasonable *at the time* the IEP was drafted.

If you have any questions regarding the above information, please do not hesitate to contact our office.

— Monica D. Batanero

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