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**(Just Slightly) Beyond the Basics:**

**Special Education Law for New Administrators**

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1. **THE RELEVANT LAW**
	1. **The Individuals with Disabilities Education Act (“IDEA”)**

The Individuals with Disabilities Education Act (“IDEA”) (20 U.S.C. § 1400 et seq.) is a comprehensive educational scheme for some, but not all, students with disabilities. IDEA gives eligible students with disabilities the right to receive public education designed to provide them with educational benefit. It provides significantly greater procedural and due process rights to eligible students and their parents than does Section 504 or the ADA. Individualized Education Programs (“IEPs”) developed under IDEA are far more prescriptive than are Section 504 plans.

While both IDEA and Section 504 require school districts to provide qualified students with a free appropriate public education (“FAPE”), the term FAPE carries different meanings under each law. Under Section 504, FAPE is the provision of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met. 34 C.F.R. § 104.33(b)(1). Under IDEA, FAPE is the provision of individualized special education and related services which permit students to receive meaningful educational benefit.

In contrast to IDEA, Section 504’s federal regulations are broad and do not provide specific procedures or standards for meeting the obligation to provide FAPE under Section 504. IDEA, on the other hand, is implemented by an extensive and complex body of federal regulations. *See* 34 C.F.R. Part 300. In addition, most states have adopted numerous laws (*See* Minnesota Statutes, Chapter 125A) and regulations (*See* Minnesota Rules Part 3525) implementing IDEA in schools.

In a nutshell, Section 504 provides qualified students *“a level playing field”* with nondisabled students. IDEA provides eligible students special education and related services to ensure that they receive meaningful educational benefit from their education. Frequently, parents and their advocates simply do not understand that Section 504 and IDEA are designed to serve different purposes and populations. Sometimes parents and their advocates seek to blur the lines between Section 504 and IDEA in order to take advantage of the greater procedural and substantive requirements of IDEA.

* 1. **Section 504 of the Rehabilitation Act of 1973 (“Section 504”)**

Section 504 (29 U.S.C. § 794) is a federal civil rights law. Section 504 is implemented through federal regulations. *See* 34 C.F.R. Part 104. There is no state law counterpart to Section 504. The purpose of Section 504 is to eliminate discrimination against individuals with disabilities in all programs or activities receiving federal financial assistance. Section 504’s requirements apply in the areas of employment, education, and “other services” offered by a recipient of federal funds. As recipients of federal funds, school districts have Section 504 obligations in all three of the above areas. As it pertains to students with disabilities, Section 504 requires school districts to provide a level playing field through reasonable accommodations. The cost of compliance is born solely by the recipient of federal funds, i.e. the school district.

* 1. **The Americans with Disabilities Act (“ADA”)**

The ADA is also a federal law prohibiting discrimination against individuals with disabilities. 42 U.S.C. § 12101, *et seq.* The ADA and Section 504 are similar with regard to the manner in which they relate to education and employment. Effective January 1, 2009, the ADA was amended to include a broader range of individuals as disabled. *See* ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553 (2008). The ADA Amendments Act (or “ADAAA”) redefined what constitutes a disability under the Act. The ADAAA expressly contains provisions which modify the definition of “disability” in Section 504 so that Section 504 is reliant upon and mirrors the definition found in the ADAAA. *Id*. at Sec. 7. Section 504 was also amended to refer back to the new definition of disability under the ADAAA. As a result, the ADAAA had a direct impact on Section 504. In light of the ADAAA, even more students and employees will be considered individuals with disabilities under Section 504 than previously was the case. This number far exceeds the number of eligible students under the Individuals with Disabilities Education Act (“IDEA”).

**D.** **State Law**

1. IDEA requires states to develop certain procedures and programs. Those procedures and programs are outlined in Minn. Stat. ch. 125A and Minn. R. ch. 3525, and some of them are addressed in this presentation.

2. Additionally, the Minnesota Human Rights Act prohibits students from excluding or expelling any individual on the basis of that individual’s disability. Minn. Stat. § 363A.13, subd. 2. Educational institutions also cannot “discriminate in any manner in the full utilization of or benefit from any educational institution,” and cannot “fail to ensure physical and program access for disabled persons.” *Id.* at subd. 1.

a. Program access includes, but is not limited to providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services.

b. Program access does not include providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

**II. IEPs & THE SPECIAL EDUCATION PROCESS**

**A. School Districts Have Two Basic Obligations Under the Individuals with Disabilities Education Act:**

1. Comply with the procedural requirements of the IDEA, which includes providing parents with an opportunity to meaningfully participate in the development of the child’s educational plan; and
2. Provide students with an “**Individualized Education Plan** [“IEP”] developed through the [IDEA’s] procedures that is reasonably calculated to enable the child to receive educational benefits.” *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176, 206-07 (1982).

**B. Child Find**

**1. Overview of Child Find under the Individuals with Disabilities Education Act (“IDEA”).**

a. IDEA requires school districts to identify, locate, and evaluate children with disabilities who reside in their district. This so-called “child find” obligation is triggered where a district has reason to suspect that the child may have a disability and that special education services may be necessary to address that disability*.” Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 942 (E.D. Va. 2010) (emphasis added).

b. The mere fact that a student has or may have an identified condition or diagnosis does not trigger a district’s child-find obligation. The district must also reasonably suspect that the student needs special education because of the condition. The student’s performance either with or without accommodations is a good barometer of whether the student needs special education. If a student struggles and fails to respond to interventions, the district should propose an evaluation, even if the student’s underlying disability is uncertain.

**2. Overview of Child Find under Section 504 of the Rehabilitation Act (“Section 504”).** Similar to IDEA, Section 504 imposes an obligation to locate, identify, and evaluate students who are believed to be in need of accommodations or special education services.

a. Practical Note: Section 504 evaluations are relatively rare. As a practical matter, staff will refer a child for a 504 evaluation, rather than an IDEA evaluation, when the child is believed to have an impairment that may require an accommodation, but not special education services. When in doubt, it is advisable to refer a student for a special education evaluation, because compliance with IDEA is compliance with Section 504. But the inverse is not true. Compliance with Section 504 is not compliance with IDEA.

3. **Chronic Absenteeism and Child Find**. Students’ absences can be relevant in the “child find” process. While a Student’s attendance problems do not automatically trigger a school district’s “child find” obligations, *Round Rock Independent School Dist.*, 25 IDELR 336 (SEA July 8, 1996), a school district’s “child find” obligation may be triggered where there are significant absences, a reason to believe the absences are linked to a disability, and a need for services.

**4. Perils of Failure to Satisfy Child Find Obligations.** If schools do not find children who are eligible for special education services, the legal consequences can be severe. In *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073 (8th Cir. 2020), an Administrative Law Judge, the U.S. District Court for the District of Minnesota, and the Eighth Circuit Court of Appeals all found that a school district had violated its child find obligations by failing to evaluate a student who was chronically absent, where the school district’s only justification for its failure to evaluate the student was her high grades. The Administrative Law Judge initially awarded the parents $838,000 in compensatory educational services; however, both the final amount and the school district’s appeal to the U.S. Supreme Court are pending.

Likewise, the Ohio Education Department found that a school district violated its “child find” obligations when private evaluation reports clearly linked the student’s attendance problems with disabilities. *Hilliard City School District*, 60 IDELR 58 (SEA OH 2012). Similarly, a school district’s Section 504 “child find” obligations were found to be triggered when student accrued significant absences around the same time the student was treated for bi-polar disorder. *Broward County (FL) Sch. Dist.*, 61 IDELR 265 (OCR 2013).

**C. Who is Considered a Child With a Disability?**

1. **IDEA**. IDEA regulations define “child with a disability” as “a child evaluated in accordance with §§ 300.304 through 300.311 as having:

a. an intellectual disability;

b. a hearing impairment (including deafness);

c. a speech or language impairment;

d. a visual impairment (including blindness);

e. a serious emotional disturbance (referred to as “emotional disturbance”);

f. an orthopedic impairment;

g. autism;

h. traumatic brain injury;

i. other health impairment;

j. a specific learning disability;

k. deaf-blindness; or

l. multiple disabilities; and

 who, by reason thereof, needs special education and related services.” 34 C.F.R. § 300.8(a)(1).

2. **Section 504.** Section 504 can apply to adults as well as students. In the special education context, Section 504 applies to students who (1) have a physical or mental impairment that substantially limits on or more major life activities [as compared to the average student], (2) have a record of such an impairment, or (3) are regarded as having such an impairment. 34 C.F.R. § 104.3(j).

3. **Minnesota Law**. “Child with a disability” means a child identified under federal and state special education law as:

a. deaf or hard of hearing;

b. blind or visually impaired;

c. deaf-blind;

or as having

d. a speech or language impairment;

e. a physical impairment;

f. other health disability;

g. developmental cognitive disability;

h. an emotional or behavioral disorder;

i. specific learning disability;

j. autism spectrum disorder;

k. traumatic brain injury; or

l. severe multiple impairments; and

who needs special education and related services, as determined by the rules of the commissioner.” Minn. Stat. § 125A.02, subd. 1. The Minnesota Rules have specific criteria for determining whether a student has any of the above-listed conditions. *See* Minn. R. 3525.1325 through Minn. R. 3525.1348.

**III. WHAT’S “FAPE” GOT TO DO WITH IT?**

1. **What is a “FAPE”?**
2. Under the IDEA, a **Free Appropriate Public Education**, or “FAPE” is the provision of individualized special education and related services that permit students to receive meaningful educational benefit. *Rowley*, 458 U.S. at 206-07. The services must:
	1. be “provided at public expense, under public supervision and direction, and without charge;”
	2. meet the State standards, including the requirements of the IDEA regulations;
	3. “include an appropriate preschool, elementary school, or secondary school education in the State involved;” and
	4. be “provided in conformity with an [IEP] that meets the requirements of [IDEA regulations].”

34 C.F.R. § 300.17.

1. Until 2017, the “educational benefit” requirement was interpreted several different ways by the courts.
2. **The *Endrew F.* Standard**

In 2017, the United States Supreme Court issued a decision in the matter of ***Endrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017)**, which altered the standard for providing a FAPE.

1. **Facts.** Endrew, a child diagnosed with autism, received annual IEPs from preschool through fourth grade. His IEP goals and objectives largely carried over from one year to the next, without significant improvement on Endrew’s problematic behaviors. Endrew’s parents believed his academic and functional progress had stalled and, when the district proposed a similar IEP for Endrew’s fifth grade year, they withdrew him from public school. Endrew’s parents then placed him in a private school that specializes in educating students diagnosed with autism. Endrew’s parents eventually filed a complaint seeking reimbursement for the tuition they paid to that private school.
2. **Issue.** What level of educational benefit is guaranteed under the IDEA?
3. **Holding.** Explicitly rejecting that merely more than *de minimis* progress is required for a FAPE, the Supreme Court opted for a more rigorous standard. The new standard requires each child’s educational program to be “appropriately ambitious in light of his circumstances” and grant “every child the chance to meet challenging objectives.”
4. **Implication.**  Prior to this ruling, the Eighth Circuit Court of Appeals, which has jurisdiction over Minnesota, declared that FAPE required schools to provide an IDEA-eligible student with an IEP that confers “some educational benefit” that is more than trivial. *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)*; see also* *E.S. v, Ind. Sch. Dist. No. 196*, 135 F.3d 566, 569 (8th Cir. 1998). This standard was similar to the *de minimis* standard that the Supreme Court rejected in *Endrew*. The *Endrew* standard is more demanding and, accordingly, IEP teams will need to reevaluate whether the goals in students’ IEP are “appropriately ambitious” based on the student’s individual needs.

**IV. “RELATED SERVICES”**

**A. Definition**. “Related services” are typically “transportation and such developmental, corrective, and other supportive services … as may be required to assist a child with disability to benefit from special education.” 20 U.S.C. § 1401(26).

**B. Examples.** Under 34 C.F.R. § 300.34(a), “related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes:

1. speech-language pathology and audiology services;

2. interpreting services;

3. psychological services;

4. physical and occupational therapy;

5. recreation; including therapeutic recreation;

6. early identification and assessment of disabilities in children;

7. counseling services; including rehabilitation counseling;

8. orientation and mobility services;

9. medical services for diagnostic or evaluation purposes;

10. school health services and school nurse services;

11. social work services in schools; and

12. parent counseling and training.

**C. Exception.** A student is not a student with a disability, for purposes of the IDEA, if he or she “only needs a related service and not special education.” 34 C.F.R. § 300.8(a)(2)(i).

**V. PLACEMENT AND THE “LEAST RESTRICTIVE ENVIRONMENT”**

**A. IDEA**

1. **Presumption.** The IDEA requires schools to ensure that, to the “maximum extent appropriate,” children with disabilities are educated with children who do not have disabilities. “Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2); Minn. R. 3525.3010, subd. 2.

 In other words, there exists a legal presumption to have the child included in the classroom he or she would be in if he or she did not have a disability. This presumption is, however, not absolute. The phrase “to the maximum extent appropriate” does not mean “to the maximum extent possible.”

**2. Continuum of Alternative Placements**. Schools must have a “continuum of alternative placements” available to meet the needs of special education students. This continuum must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals. In addition, schools are required to make supplementary services available in conjunction with regular classroom placement. Minn. R. 3525.3010.

**3. *Roncker* Analysis.**

a. The Eighth Circuit Court of Appeals has adopted the reasoning used by the Sixth Circuit Court of Appeals in *Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1988) to interpret the federal LRE requirements. *A.W. v. Northwest R-1 School District*, 813 F.2d 158 (8th Cir. 1987). The Eighth Circuit quoted the following language:

“In a case where the segregated facility is considered superior, the court should determine whether the services which make that placement superior could be feasibly provided in a non-segregated setting. If they can, the placement in the segregated school would be inappropriate under the Act.”

b. The Roncker analysis is threefold, as follows:

i. Would the child with a disability benefit from mainstreaming?

ii. Would any marginal benefits obtained by mainstreaming be far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting?

iii. Is the disabled child a disruptive force in a non-segregated setting?

**B. Section 504**

1. Section 504’s LRE requirement is similar to that of the IDEA. A student should be placed in the regular education environment unless it is demonstrated that the education of a student in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily. See 34 C.F.R. § 104.34(a).

2. Providing a student with a disability too many accommodations or modifications can also constitute discrimination.

3. Relatedly, Section 504 does not guarantee students with disabilities equal playing time, equal grades, or any other benefit equivalent to that received by their non-disabled classmates. Instead, Section 504 guarantees those students with disabilities the equal opportunity to benefit from activities or services provided by the school district.

**VI. DISCIPLINE IN THE SPECIAL EDUCATION CONTEXT**

**A. Manifestation Determinations.** School districts ***may not*** expel a student with a disability if the misbehavior is a manifestation of the student’s disability, ***but may*** expel a student with a disability if the misconduct is not a manifestation of the student’s disability. *See* 34 C.F.R. § 300.530.

1. IDEA provides that a manifestation determination meeting must be held within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. *See* 34 C.F.R. § 300.530(e)(1).
2. For purposes of conducting a manifestation determination, a “change in placement” occurs when a student has been removed from class (e.g., suspended) for five (5) consecutive school days or ten (10) cumulative school days. Minn. Stat. § 121A.43. Partial-day suspensions count towards this limit, as well as the total amount of time for which a school can suspend a student with a disability. *Id.*
3. Removal from bus services may count towards the 5 and 10-day thresholds if the student has special transportation listed on his or her IEP.

2.Upon deciding to expel a student, the school district must notify the student’s parent or guardian of the decision and provide them with a copy of the procedural safeguards brochure. *See* 34 C.F.R. § 300.530(h).

**B. FAPE.** Under federal law, special education students are entitled to receive FAPE during the period of expulsion. *See* 34 C.F.R. § 300.530(b)(2). The end result is often an expulsion in form, but not in substance.

**C. State Law.** State law may place additional restrictions on a school’s ability to expel or suspend a special education student.

**VII. SCHOOLS HAVE LIMITED AUTHORITY TO REMOVE SPECIAL EDUCATION STUDENTS FROM SCHOOL**

1. **Unilateral 45 (School) Day Placements.** Under the IDEA, a school district may unilaterally place a student in an appropriate interim alternative educational setting for up to 45 *school* days if the student does any of the following while at school, on school premises, or at a school function:

 1. carries or possesses a weapon;

A weapon is generally defined as a device, instrument, material or substance that is used for or is readily capable of causing death or serious bodily injury, including a knife with a blade exceeding two and a half inches in length. 18 U.S.C. § 930(g)(2) (2004).

 2. knowingly possess or uses illegal drugs;

 3. sells or solicits the sale of a controlled substance; or

 4. inflicts “serious bodily injury” on another person.

The infliction of “serious bodily injury” requires a showing of substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function of a bodily member, organ or mental faculty. This is a very high standard as demonstrated by the following examples:

* *Patrick v. Success Acad. Charter Sch., Inc*., No. 17-CV-6846 (PKC/RLM), 2017 WL 6557478 (E.D.N.Y. Dec. 22, 2017). The student grabbed an Assistant Principal by the hair and used a tight grip to yank her down the hallway, while using his other hand to repeatedly hit her in the head and neck, leaving several marks; intentionally threw a stool at the Assistant Principal, striking her in the hand; repeatedly and forcefully yanked on a lanyard worn around the Assistant Principal’s neck, resulting in a neck injury that required immediate medical care; and repeatedly kicked the Assistant Principal and another member of school leadership. The hearing officer determined this was NOT serious bodily injury.
* *Olu-Cole v. E.L. Haynes Pub. Charter Sch*., 292 F. Supp. 3d 413, 421 (D.D.C. 2018). The student punched another student numerous times which resulted in the other student being transported to the hospital in an ambulance, and the student suffered a seizure, significant bruising, and memory loss. This was determined to be serious bodily injury.

**VIII. PARENTAL INPUT**

**A. Parents Are Part of the IEP Team.** TheIDEA requires that all significant decisions regarding a special education student’s program of education must be made, in the first instance, by the IEP team, including the parents.

1. Under IDEA and the regulations implementing it, **school districts must ensure that parents have an opportunity to meaningfully participate in IEP meetings.** 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.345.

1. **The IEP team must fully consider any request that parents make** to change the identification, evaluation, or special education services provided to their child.

Note: The term “consider” is not synonymous with “accept,” agree,” or “incorporate.” *K.E.*, 647 F.3d at 805-06. An IEP team “considers” parental requests when it discusses them at a team meeting. *Id.* Actually incorporating parent input into the IEP, however, is strong evidence that the team “considered” the parent’s request. *Id.*

1. **The IDEA does not require that school districts simply accede to parents’ demands.** *Lachman v. Illinois St. Bd. of Educ*., 852 F.2d 290, 297 (7th Cir. 1988); *Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999). A school district’s adherence to a decision does not constitute a procedural violation of IDEA simply because the school district did not grant a parent’s request. *Id.* Parents have the right to participate, not to dictate the IEP team decisions. *In re Matter of [Student],* MDCFL Case No. 254-1.
2. **Parental preference alone cannot be the basis for compelling a school district to provide a particular education plan for a child with disabilities.** *Slama v. Independent Sch. Dist. No. 2580*, 259 F.Supp.2d. 880, 885 (D. Minn. 2003) (“no parent of a public school child – whether disabled or not – is entitled to select every component of the child’s education . . . an IEP is to be created by an IEP team, and not dictated by the parents of the student”).

**IX. THE PAPERWORK MATTERS**

1. **The Failure to Complete Paperwork May Result in Liability.** The IDEA and State special education law require school districts to produce different types of documents (e.g., evaluation reports, IEPs, prior written notices, and progress reports) at specific times. The law provides specific requirements that each of these types of documents must meet. The failure to create a required document or include a required element of that document may result in liability in an MDE complaint or special education due process hearing.
2. **Thorough Paperwork Helps Defend Against and Potentially Prevent IDEA Disputes.**
3. **Dispute Prevention.** Thoroughly documenting interventions, modifications, and services provided may actually prevent disputes over the provision or effectiveness of those services. The absence of data makes it more likely that the parent will dispute the assertion that the service was properly provided. In the absence of data, the service provider’s testimony as to student progress will be open to challenge. In order to prevent or reduce disputes of this nature, educators should be sure to document every time a service was provided, or when the service is scheduled to begin.
4. **Evidence.** It is imperative that special education staff understand that student related documents are potentially relevant evidence in a hearing or MDE complaint process. There are sound reasons for documenting all discussions and actions.

a. **Testimony Alone is No Longer Sufficient.** In order to be afforded weight in a hearing or complaint, a professional’s testimony must now be supported by written evidence.

b. **Staff Leave.** When staff have left the district’s employ, it is often difficult for the district to piece together the facts underlying their role in a student’s education. A fully documented record provides a district the information it needs to: access the strength of its case, respond to a complaint, and determine what witnesses it needs to call for a hearing.

c. **Memories Fade.** Documents may be used to refresh an employee’s recollection of particular events or replace employee testimony regarding an event that is completely forgotten.

3. **Limitations Period.** One of the issues at play in the *E.M.D.H.* case mentioned earlier is whether some of the missed services for which the parents sought $838,000 in compensatory education fell outside the IDEA’s statute of limitations. The interpretation of IDEA’s statute of limitations is a disputed issue among special education attorneys, ALJ’s, and courts. It is undisputed, however, that the IDEA statute of limitations does not apply if parents are not given a Notice of Procedural Safeguards describing their right to pursue a due process hearing, or for that atter if they are not given other information that they are entitled to under IDEA. 20 U.S.C. § 1415(f)(D)(ii). Parents are entitled to a notice of procedural safeguards once per year, upon initial referral, upon the first occurrence of filing an MDE complaint, or upon request. *Id.* at § 1415(d)(1)(A). Documenting when the parents were provided this notice, and who provided it to them, forecloses an argument by the parents that the limitations period never began.

**X. CONSIDERATIONS REGARDING SPECIAL EDUCATION DATA**

1. **Student Records are Generally Not Covered by the HIPAA.** School districts may be subject to the HIPAA if they engage in certain transactions, such as billing health plans electronically for medical services. *See* 45 C.F.R. § 160.102. However, even if the *school district* is subject to the HIPAA, most *student records* are exempt from the HIPAA privacy requirements. The HIPAA specifically exempts records that are subject to the FERPA from its so-called privacy rule. 45 C.F.R. § 160.103(2)(i). Virtually every student record is subject to the FERPA, and is therefore exempt from the HIPAA. *See* 34 C.F.R. § 99.3.
2. **Parents have a Right to Inspect Special Education Documents.** The IDEA allows parents to inspect their children’s educational records. 20 U.S.C. § 1415(b)(1). This includes the right to have a representative inspect the records, 34 C.F.R. § 300.613(b)(3), the right to receive “reasonable” explanation or interpretation of those records, 34 C.F.R. § 300.613(b)(1), and the right to request amendment of records they believe are inaccurate or misleading. 34 C.F.R. § 300.618.
3. **Destruction of Special Education Records.** The district must inform parents when a record it has collected, maintained, or used pursuant to the IDEA is no longer necessary to provide services to their child. 34 C.F.R. § 300.624. Such unnecessary information must be destroyed upon a parent’s request, except that the district may retain a permanent record of the student’s name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed indefinitely. *Id.*
4. **FERPA Compliance.** FERPA is a federal law that protects the privacy of student education records. FERPA applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. This includes virtually all public schools and school districts.
5. **State Law Concerns.** The IDEA allows states to create additional protections for special education students. Be sure to check with your local laws to gain a comprehensive understanding of all special education laws and regulations.

**XI. THE TAKEAWAY: AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE**