

2020 LUNCH and Learn

SPECIAL WEBINAR SERIES

THURSDAYS, NOON - 1 P.M.

Registration

Use the links below to register for each webinar. There is no registration fee for this special series, however you must register to participate.

After you register, you will receive a confirmation email. You will receive the link to participate in the webinar the morning of each webinar.

Boardmanship Institute

Participating board members will receive 1 point and 1 hour of SCSBA Boardmanship Institute credit for each webinar.

September 3, 2020

COVID-19 and potential liability under IDEA — Providing a "FAPE" while employing alternative instruction delivery methods

The Individuals with Disabilities Education Act (IDEA) requires that school districts provide eligible students with disabilities with a free appropriate public education or a "FAPE". What constitutes a FAPE when schools are operating under normal circumstances, with traditional face-to-face instructional delivery, has been litigated extensively and legal guidance can be gleaned from Supreme Court rulings. Now, with the COVID-19 pandemic, school districts are faced with unique, unprecedented circumstances that are requiring the use of alternative instructional delivery methods during the 2020-2021 school year. This session will help board members understand how the Supreme Court has defined FAPE,



Keup

and the core concepts relating to the provision of a FAPE. Participants will explore how the core concepts of providing a FAPE may be interpreted in light of the changes necessitated by the COVID-19 pandemic and how school districts can employ good practices to minimize potential IDEA liability.

Peter Keup, Esquire, Boykin & Davis, LLC

● **Click here to register now.**

September 10, 2020

Funding long-term and short-term capital projects

During this session board members will explore the financing options available to school districts under South Carolina law to finance short-term and long-term capital needs.



Heizer

Francenia B. Heizer, Attorney, Burr Forman McNair

● **Click here to register now.**



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We welcome your calls and e-mails. Call toll-free. After hours, dial the extension to leave a voice mail.

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Boardmanship Institute CALENDAR OF EVENTS

For the most updated conference information,
please routinely check the Training tab on our website, scsba.org.

Conferences	Date(s) & Location	Fees & Deadlines	BI Points & Hours
NSBA Advocacy Institute	January 24-26, 2021 Washington, DC TBD	National School Boards Association www.nsba.org	5 points
<u>Annual Convention, Civility and Professional Ethics Workshop, Board Chair Workshop, New Board Orientation</u>	February 18-21, 2021 Hilton Head/Hilton Head Marriott	<u>Feb 18: Civility and Professional Ethics Workshop</u> ♦ Registration fee: \$135, members only <u>Feb 18: Board Chair Workshop</u> ♦ Registration fee: \$135, members only <u>Feb 18: New Board Orientation</u> ♦ Registration fee: \$100, no charge for new board members, members only <u>Feb 18-21: Annual Convention</u> ♦ Registration fee: \$275, non-members \$475 ♦ Cancellation deadline: TBD Hotel rate: \$146, Hotel deadline: Jan 20	CPEW: 10pts 5 hrs BCW: 10pts 5 hrs NBO: 5 pts 5 hrs AC: 15 pts 14 hrs
<u>2DAC</u> (Two Days at the Capitol)	March 4, 2020 Columbia/Columbia Metropolitan Convention Center	♦ Registration fee: \$75 ♦ Cancellation deadline: February 26	5 pts 2 hrs
NSBA Annual Conference	April 4-6, 2020 Chicago, IL	National School Boards Association www.nsba.org	5 points
<u>2DAC</u> (Two Days at the Capitol)	April 22, 2020 Columbia/Columbia Metropolitan Convention Center	♦ Registration fee: \$75 ♦ Cancellation deadline: April 15	5 pts 2 hrs
<u>New Board Orientation, Make-up</u>	June 4, 2020 Virtual Conference	♦ Registration fee: \$100, no charge for new board members, members only ♦ Cancellation deadline: May 21	5 pts 5 hrs
<u>School Law Conference</u>	August 21-22, 2020 Virtual Conference	♦ Registration fee: \$150, non-members \$250 ♦ Cancellation deadline: August 6	15 pts 7 hrs
<u>Webinar-Lunch & Learn Series</u>	September 3, 2020	There is no registration fee for this event. Board secretaries <u>must register</u> their board members who plan to participate.	1 pt 1 hr
<u>Webinar-Lunch & Learn Series</u>	September 10, 2020	There is no registration fee for this event. Board secretaries <u>must register</u> their board members who plan to participate.	1 pt 1 hr
<u>Beyond the Basics Workshop</u>	October 8, 2020 Virtual Conference	♦ Registration fee: \$100, non-members \$200 ♦ Cancellation deadline: September 24	5 pts 5 hr
<u>Webinar-Legislative Preview</u>	October 2020	There is no registration fee for this event. Board secretaries <u>must register</u> their board members who plan to participate.	1 pt 1 hrs
<u>Risky Business Seminar</u>	October 15, 2020 Virtual Conference	♦ Registration fee: \$80, members only ♦ Cancellation deadline: September 1	10 pts 5 hrs
<u>Legislative Advocacy Conference</u>	December 3, 2020 Virtual Conference	♦ Registration fee: \$125, non-members: \$250 ♦ Cancellation deadline: November 20	10 pts 5 hrs

Revised: August 25, 2020

<u>Delegate Assembly</u>	December 4, 2020 TBD		
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Conferences held on Saturday and Sunday begin approximately 8 a.m. and may require Friday and Saturday night hotel stay.

- ♦ Registration fees are subject to change.
- ♦ No refunds after the cancellation deadline.
- ♦ Registration fees increase \$25 for registrations made after the deadline.

FAPE IN THE NEW WORLD

SCSBA LUNCH AND LEARN
WEBINAR

SEPTEMBER 3, 2020

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THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) REQUIRES THAT:

States (SEAs) and school districts (LEAs) make available to all students ages 3 to 21 a free appropriate public education, which is commonly referred to as “FAPE”.

See 20 U.S.C. §§ 1400 & 1412

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THE IDEA DEFINES FAPE AS:

Special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

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TWO PARTS FOR FAPE

- **Procedural** - Adherence to the Procedural Requirements in the IDEA and Implementing Regulations
- **Substantive** – Designing a program that meets the student's individualized educational needs

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PROCEDURAL COMPONENTS OF FAPE (BASED ON IDEA AND REGULATIONS)

- An individualized education program (IEP) that is developed, reviewed, and revised in accordance with the IDEA
 - Appropriate data collection (evaluation, progress assessments, etc.)
 - Parent participation (including consent when necessary)
 - Adherence to timelines (evaluation, IEP development, etc.)
 - Adherence to procedures (necessary team participants, notices, documents)
 - Inclusion of necessary sections (present levels, goals, services, etc.)
- Student is educated in the least restrictive environment (LRE), which means that to the maximum extent appropriate, student is educated with nondisabled students
- Student receives special education and related services as designated in IEP

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IN IDEA CASES, COURTS HAVE SAID:

If a school district fails to adhere to the procedural requirements of the IDEA

AND

It results in a loss of educational opportunity

THEN

There is a denial of FAPE

6

BUT WHAT IF A PARENT CONTESTS THE SUBSTANCE OF THE PROGRAM?

What if a school district follows the IDEA procedural requirements as outlined in the statute and regulations but the parent disagrees with the content of the IEP?

In other words, what if a parent challenges the adequacy of the program described in the student's IEP?

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SUPREME COURT DECISIONS ON FAPE

[Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 \(1982\)](#)

[Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988 \(2017\)](#)

Article discussing Rowley, Endrew F. and the FAPE standard:
<https://perryzirkel.files.wordpress.com/2013/08/zirkel-case-note-on-endrew-f.pdf>

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BOARD OF EDUCATION V. ROWLEY

- Plaintiff Amy Rowley was a first grader with impaired hearing. Her school district offered an IEP under which Amy would receive instruction in the regular classroom and one hour of instruction per day with a teacher for the deaf and three hours per week of speech therapy.
- Amy's parents disputed the IEP because they wanted sign language interpreting services for all academic subjects.
- The Supreme Court, in a split decision, determined that the IEP was adequate because it was **"reasonably calculated to enable the child to receive educational benefits"**

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POST-ROWLEY SPLIT

After the Rowley case, the Supreme Court did not address the substantive FAPE standard for several years. Subsequent lower court decisions generally fell into one of two categories in further refining the definition of "educational benefit."

Some jurisdictions defined it as "meaningful" benefit



Others required only "some benefit", or merely more than "de minimis"

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ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT RE-1

- Endrew F was a student with autism who was diagnosed at age 2. Endrew F attended public school until the end of fourth grade when his parents removed Endrew from public school and enrolled him at a private school that specialized in educating children with autism.
- The lower standard (de minimus) was applied by the Tenth Circuit.
- Endrew's parents argued for a higher standard, one that would provide a disabled child with "... opportunities to achieve academic success ... **substantially equal** to the opportunities afforded to children without disabilities."
- In a unanimous decision, the Court rejected both the lower "some benefit" or "de minimus" standard and the higher "equal" standard argued. They instead applied an intermediate standard.

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ENDREW F STANDARD

"a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to sitting idly ... awaiting the time when they were old enough to 'drop out.' The IDEA demands more. **It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.**"

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HOW ENDREW F MODIFIED THE FAPE STANDARD

- **Shift from benefit to progress**

“The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.”

- **What is appropriate depends on the student’s circumstances**

“A focus on the particular child is at the core of the IDEA. The instruction offered must be ‘*specially designed*’ to meet a child’s ‘*unique needs*’ through an ‘[i]ndividualized education program.’ An IEP is not a form document. It is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.”

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WHAT DOES FAPE LOOK LIKE WHEN THERE IS A PANDEMIC?

- FAPE has always been individualized and that remains true during the pandemic.
- FAPE requirements (both procedural and substantive) have not been reduced or altered due to the pandemic.
- But the delivery of educational services looks different now for all students.
- New challenge – adhering to FAPE requirements in light of the current circumstances (and when using different instructional delivery models).

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DIFFERENT INSTRUCTIONAL MODELS

- Traditional Face to Face (F2F)
- Hybrid (e.g., students F2F two days a week and participate virtually three days a week)
- Virtual (synchronous and asynchronous)

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Remote Learning	Computer-Based Instruction (CBI)	Online Learning
<p>What it is...</p> <p>Learning that involves distance between learner and instructor who cannot meet in a traditional setting. The instructor provides learner the lessons. Learner typically is learning independently.</p>	<p>What it is...</p> <p>Instruction that happens through the computer. Typically students do exercises on the computer.</p>	<p>What it is...</p> <p>Pedagogically-organized learning activities with an instructor who understands online instruction and the online learning environment. Learner supported by the instructor throughout the entire learning process.</p>
Use of lessons from the traditional settings	Use of skill-based, computer software	Use of an LMS to organize learning objects and lessons
Typically seen during eLearning Days when traditional settings are not available	Typically seen in traditional settings	Typically seen in full-time online charter schools, online schools, and state virtual schools
Examples – The Happy Scientist, Khan Academy, recording videos for asynchronous viewing	Examples – Dreambox, Type to Learn, Study Island	Examples – Screencast-o-matic, Zoom, Google Classroom, Learning Management System, discussion

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GUIDANCE FROM THE SCDE (OSES)

IEPS will be amended, as needed, to reflect the instructional delivery model chosen by the parent so that appropriate special education and related services, supports, accommodations, and modifications are designed to provide meaningful educational benefit (FAPE) in the least restrictive environment.

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ADDITIONAL OSES GUIDANCE

1. What are the general education curriculum and instruction models being used for all students?
2. How does the student's disability affect his/her access to the general education curriculum?
3. Where is the student currently functioning with regards to the general education curriculum?
4. What services and supports does the student with a disability need to access the curriculum and instruction?

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DISTINGUISHING BETWEEN LAST SPRING AND THIS FALL

EMERGENCY DEPLOYMENT OF ALTERNATIVE INSTRUCTIONAL DELIVERY (SPRING 2020)

- CONTINGENCY PLAN DURING SCHOOL CLOSURE
- REASONABLE AND PRACTICABLE ACCESS
- WAS A RESPONSE TO AN EMERGENCY SITUATION (AND EMERGENCY ORDERS)
- LITTLE TIME TO PLAN FOR ALL FACTORS/ISSUES
- DID NOT TYPICALLY REQUIRE IEP MEETING

VIRTUAL INSTRUCTIONAL MODEL (Fall 2020)

- ALL SPECIAL EDUCATION, RELATED SERVICES, SUPPORTS, ACCOMMODATIONS, AND MODIFICATIONS PROVIDED TO ENSURE ACCESS, PROGRESS AND PROVIDE MEANINGFUL BENEFIT
- PROBABLY REQUIRES IEP MEETING TO APPROPRIATELY ADDRESS CHANGE IN INSTRUCTIONAL DELIVERY MODEL
- RIGHT TO LRE HAS NOT CHANGED, BUT HOW GEN ED SYSTEM OPERATES MIGHT HAVE (INSTRUCTIONAL DELIVERY MODEL)

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RE-ENVISIONING SPECIAL EDUCATION AND RELATED SERVICES

Specially designed instruction, at no cost to parents, to meet the unique needs of a student with a disability

- Use available tools (virtual sessions, software applications, online content, packets, F2F instruction) to customize instruction to meet the student's unique needs
- Same approach (analyze impact and needs and specially design the student's instruction to address both) but just in a different context

Developmental, corrective, and other supportive services (e.g., OT, PT, Speech) as may be required to assist the student to benefit from special education

- What services are needed to support the specialized instruction (designed in the new world) and in what frequency and duration?
- How can we deliver those services (teletherapy/virtually, in home, F2F)?

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THE BIG FAPE QUESTION IN THE PANDEMIC ERA

When analyzing whether an IEP provides FAPE, does the “child’s circumstances” (as used in the *Endrew F* standard) include the broader context of what is going on in the world and in education generally (for all students)?

If so, does this change expectations with respect to student progress for all students, including students with disabilities?

Food for thought: Grade level scores and rate of improvement models were established in non-COVID times (when F2F was the predominant delivery method) and impact of pandemic on student achievement is uncertain

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TIPS FOR MINIMIZING FAPE ISSUES

- ☐ Adhere to the procedural requirements of the IDEA as much as possible and when you do not, provide a written explanation of why strict adherence was not possible (can use prior written notices or PWNs as documentation)
- ☐ Design IEPs starting with the impact of the disability and the student’s individualized educational needs (based on current information) rather than merely trying to “replicate” services from past IEPs (that were delivered almost exclusively F2F)
- ☐ Communicate frequently with parents and maintain documentation of contacts
- ☐ Document the provision of specialized instruction (NEW) and related services (NOT NEW)
- ☐ Have contingency plans built into IEPs when possible and appropriate
- ☐ Anticipate IEP amendments and utilize IDEA flexibility (amendments without meeting)

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TIPS CONTINUED

- ☐ Continue to develop infrastructure to support hybrid and virtual instructional delivery methods for specialized instruction (invest in one to one devices/computers, electronic assessment tools, distribute mifi devices, obtain software licenses, support/fund professional learning opportunities)
- ☐ Utilize existing information and resources regarding online learning (e.g., [Center on Online learning and Students with Disabilities](#), [NASDSE webinar regarding accessibility and online learning](#))
- ☐ Listen to, consider, and respond promptly to parent concerns (problems escalate and frustrations increase with the passage of time)

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[illegible]
