Fact or Fiction?

- A paperclip is considered a dangerous weapon that can result in a removal of up to 45 school days regardless of whether or not possession is determined to be a manifestation of the child’s disability.
Anaheim Union High Sch. Dist.,
32 IDELR 29 (SEA CA 2000)

How Would You Respond?

• “My child has ED; you have to let him play on the football team even though he doesn’t follow the rules.”
Fact or Fiction?

• A school district cannot place a cap on fees for independent evaluations.
M.V. v. Shenendehowa Central School District, 60 IDELR 213 (NDNY 2013)

Fact or Fiction?

• A school district does not need to send Prior Written Notice after an ARD meeting when all members are in agreement.
34 C.F.R. § 300.503

How Would You Respond?

• “You can’t pull my son out of Gifted and Talented English class. He’s learning disabled. You just have to give him more accommodations.”
Wilson Cty (TN) Sch. Dist.,
50 IDELR 230 (OCR 2007)

Fact or Fiction?

• Students with disabilities may eat foods of minimum nutritional value whenever they want.
Fact or Fiction?

- The nurse will be held liable for injuries to students with diabetes that occur during the school day.
Tex. Educ. Code § 22.051
Tex. Standards of Professional Nursing

Fact or Fiction?

• A school district must respond to a request for an independent evaluation within 5 school days.
Los Angeles Unified Sch. Dist.,
111 LRP 48178 (SEA CA 2011)

How Would You Respond?

• “My child didn’t make enough progress this school year, so he needs ESY.”
19 Tex. Admin. Code § 89.1065

How Would You Respond?

• “My child will receive additional services if he is labeled as autistic.”
Fact or Fiction?

• When a due process hearing has been filed, the ARD committee can’t meet because of stay-put.
Fact or Fiction?

• If parents don’t agree to residential placement, a school district can’t place the child there.
Dept. of Educ. Of Hawaii, 51 IDELR 262 (SEA Hawaii 2008)

Fact or Fiction?

• A special education counselor can disclose information from counseling sessions, even if the child specifically stated the conversation has to remain confidential.
Code of Ethics and Standard Practices of the American Counseling Association; FERPA

Fact or Fiction?

• This is a measurable goal:
  “Student will complete the fourth grade curriculum in the areas of science and social studies.”
Penn Trafford Sch. Dist. v. C.F.,
45 IDELR 156 (W.D. Pa 2006)

Fact or Fiction?

• If divorced parents don’t want to be in the same room with one another, the school district has to hold two separate ARD meetings.
19 Tex. Admin. Code § 89.1045

Fact or Fiction?

• If a student transfers districts in the middle of an evaluation, the timelines restart so that the new district may conduct RTI.
Letter to State Directors of Special Education, 113 LRP 29648 (OSEP July 2013)

How Would You Respond?

• “A special education bus is not my child’s Least Restrictive Environment. He would be fine on the general education bus if you provided him with a 1:1 aide.”
Q&A on Children with Disabilities
Eligible for Transportation,
53 IDELR 268 (OSERS 2009)

Fact or Fiction?

• Related services are not required to have separate IEP goals.
H.H. v. New York City Dept. of Educ.,
56 IDELR 69 (S.D. N.Y. 2011)

Fact or Fiction?

• There is a due process hearing on record that lasted for 32 days.
Woods v. Northport Public School, 59 IDELR 64 (6th Cir. 2012)

Fact or Fiction?

• Emergency ARD meetings must be held within 5 school days of a parent request.
Fact or Fiction?

• When a parent revokes consent for special education and related services under the IDEA, a school district has no obligation to evaluate the child for services under Section 504.
Kimble v. Douglas County Comm. Sch., 60 IDELR 221 (SEA 2013)

How Would You Respond?

• “My child is autistic, so he cannot be penalized for absences.”
Fact or Fiction?

- School districts must provide parents with the right to inspect and review their child’s education records prior to an ARD meeting, if they make a request.
34 C.F.R. § 300.613

How Would You Respond?

• “My child needs hearing aids. That’s an assistive technology device. The school district must provide my child with hearing aids because it is necessary for her to receive educational benefit.”
River Vale Board of Education, 
9 ECLPR 39 (SEA NJ 2011)

Fact or Fiction?

• A school district was recently faulted for failing to consider in detail eleven outside evaluations that were presented by the parent at the IEP team meeting.
How Would You Respond?

• “As a parent, I am entitled to bring whomever I choose to my child’s ARD meeting. I would like to introduce Ron Trevino, news reporter from my local CBS station, and his news crew.”
Fact or Fiction?

• The 10-day recess requirement does not apply to Manifestation Determination Review ARD meetings.
19 Tex Admin. Code § 89.1050(h)(1)

Fact of Fiction?

• A 3-hour bus ride (round trip) is excessive and deprives a student of FAPE.

Fact or Fiction?

• If a student with disabilities is absent more than ten school days, you may administratively withdraw the student from school.
Fact or Fiction?

- A Release of Confidential Information should be obtained when the parent brings a non-lawyer advocate, friend, or other person with them to an ARD meeting.
Family Education Rights and Privacy Act  
- FERPA

34 Code of Federal Regulations 99.30

Fact or Fiction?

• The district should obtain a release of liability or hold harmless prior to implementing a reasonable accommodation as decided upon by the ARD committee.
Fact or Fiction?

- District was required to provide a 1:1 “qualified” aide for a student with autism in order to participate on the school’s mountain biking team.
Fact or Fiction?

- District may not require parent chaperones for students with disabilities to participate in extracurricular activities (i.e. school dance).
Fact of Fiction?

• It is a manifestation of a student’s disability if he assaults another student for making fun of the disabled student’s mother.
Fact or Fiction?

- The ARD committee may develop and implement a Behavior Intervention Plan without first completing a Functional Behavioral Assessment.
Comment to 34 CFR 300.324(a)(2)(i)

Fact or Fiction?

• If a school allows a private daycare to operate out of its facilities without charge, the district is not responsible for providing equal access to students with disabilities under Section 504.
Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA)

Fact or Fiction?

• It is best practice to accept a doctor’s note for homebound services, as long as the doctor has certified that four (4) consecutive or cumulative weeks of homebound services are required.
Plano Independent Sch. Dist.,
62 IDELR 159 (Tex. SEA 2013)

Fact or Fiction?

• The district’s board of trustees must approve Resolution Session Agreements.

Fact or Fiction?

• If an ARD committee determines that a service animal is not required for the provision of FAPE, the district does not have to allow the service animal into the school.
Fact or Fiction?

- The Fifth Circuit found no “special relationship” between student and district that would create liability for student injury.
Fact or Fiction?

- It is a reasonable accommodation for a teacher to build a fort in her classroom for a student with behavior issues.
Fact or Fiction?

- All children in foster care must have a surrogate parent appointed.
Fact or Fiction?

• Emails are education records and must be kept for five (5) years after the cessation of special education services.
Fact or Fiction?

• It is appropriate for counseling services to be provided on an “as needed” basis.
O’Toole by O’Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233, 28 IDELR 177 (10th Cir. 1998)

Fact or Fiction?

• A district may adopt a private school’s IEP upon transfer into a public school.

• What if the private school placement was made by the district?
Fact or Fiction?

- Once a parent refuses to consent to an evaluation, the district is dismissed of its Child Find obligation.
Fact or Fiction?

• A court required a district to serve a student with special education and related services, even though the student was incarcerated in an adult prison’s special unit for highly assaultive inmates.
Fact or Fiction?

- The district is predetermining a student’s services if it meets prior to the IEP meeting and recommends removing a student’s 1:1 instructional aide.
Strongsville City Sch. Dist.,
113 LRP 29340 (SEA OH 10/12/12)

Fact or Fiction?

• A school district cannot conduct its own medical evaluation.
Shelby v. Conroe ISD, 454 F.3d 450 (5th Cir. 2006)

Fact or Fiction?

• A Private Duty Nurse is never allowed on school premises to serve a student.
34 C.F.R. Section 300

Fact or Fiction?

• Students with learning disabilities do not require behavioral interventions and supports as part of their IEP.
Dear Colleague Letter
(OSERS August 2016)

Fact or Fiction?

• School districts must fund IEEs up front, rather than reimbursing parents afterward.
Seth B. v. Orleans Parish School Board, (5th Cir. 2016)

Fact or Fiction?

- Using the transition plan screen in your software will guarantee compliant transition services.
Schl. Dist. of Philadelphia,
111 LRP 23182 (SEA PA 2011)

Fact or Fiction?

• In Texas, transition planning requires a Functional Vocational Evaluation.
Texas Education Code § 29.011

• A school can remove a special education student for misconduct -- even if the school didn't implement the IEP.
Troy School District v. K.M.,
64 IDELR 303 (E.D. Mich. 2015)

Wayne-Westland Community Schools v.
V.S., 65 IDELR 13 (E.D. Mich. 2015)

Fact or Fiction?

• The student's doctor is always right -- rely on the doctor for programming decisions.
Fact or Fiction?

- Students who excel academically do not demonstrate an educational need for special education.
Fact or Fiction?

• Districts must evaluate in all areas of suspected disability.
Phyllene W. v. Huntsville City Board of Education, 66 IDELR 179 (11th Cir. 2015)

Fact or Fiction?

• Parents can request an IEE not previously evaluated by the school.
Fact or Fiction?

- The ARD committee determines a student's educational placement, as well as the location of that placement.
Fact or Fiction?

- A parent's conduct can hurt their case when demanding private school placement.
Rockwall Indep. Sch. Dist. v. M.C., 116 LRP 9727 (5th Cir. 2016)

Fact or Fiction?

• Prior to referral, the school must use RTI.
19 Tex. Admin. Code. § 89.1011

Fact or Fiction?

• A school district must wait until 10 days have accumulated before holding a Manifestation Determination Review ARD for a student.

GENERAL BEHAVIOR ISSUES
Fact or Fiction?

- ARD committees should wait until 30 days after a transfer student enrolls in the district before implementing behavior interventions.

Board of Education of Evanston-Skokie Community Consolidated Sch. Dist. v. Risen, 61 IDELR 130 (N.D. Ill. 2013)
Fact or Fiction?

• Failure to achieve IEP behavior goals means that the student did not make progress.

M.M. v. Special School Dist. No. 1, 49 IDELR 61; 512 F.3d 455 (8th Cir. 2008)
Fact or Fiction?

- Requiring a student to stand on a map of the US during recess as a disciplinary measure does not amount to a denial of FAPE.

_Hupp v. Switzerland of Ohio Local Sch. Dist., 60 IDELR 63 (S.D. Ohio 2012)_
Fact or Fiction?

• The duties of campus behavior coordinators do not apply to special education students.

Texas Senate Bill 107
FBA, BIP, OMG

Fact or Fiction?

• It is not a requirement to conduct a FBA prior to implementing a BIP.
K.L. v. New York City Dep’t. of Ed., 59 IDELR 190 (S.D. N.Y. 2012), aff’d. at 61 IDELR 184 (2nd Cir. 2013)

Fact or Fiction?

• A BIP must be developed when a student demonstrates negative behaviors.
Fact or Fiction?

- A FBA is not an evaluation, and does not require parental consent.
Fact or Fiction?

• By default, a student’s arrest indicates that he should have had a BIP.
Rodriguez v. San Mateo Union High School Dist., 53 IDELR 178 (9th Cir. 2009)

AVERSIVE BEHAVIOR TECHNIQUES
Fact or Fiction?

• OSEP prohibits the use of aversive behavior techniques, such as restraint.

Letter to Trader,
48 IDELR 161 (OSEP 2006)
**Fact or Fiction?**

- Restraint may only be used in an emergency situation where the student’s behavior poses a threat of imminent, serious physical harm to the student or others; or, imminent, serious property destruction.

19 Tex. Admin. Code § 89.1053
Fact or Fiction?

- School resource officers are exempt from the requirements to report restraints.

19 Tex. Admin. Code § 89.1053
MANIFESTATION DETERMINATION REVIEW

Fact or Fiction?

• The campus administrator determines whether or not the student violated the Student Code of Conduct, even if the student is in special education.
Danny K. v. DOE State of Hawaii, 57 IDELR 185 (D.C. Ha. 2011)

Fact or Fiction?

• The members of the MDR committee must include all regular members of the student’s ARD committee.
Fitzgerald v. Fairfax County School Board, 50 IDELR 165; 556 F.Supp.2d 543 (E.D.Va. 2008)

Fact or Fiction?

• Time-out, after-school detention, and lunch detention do not count as days of removal for purpose of a “change in placement” analysis.
Honig v. Doe, 559 IDELR 231 (1988)

Horizon Science Academy of Cleveland, 110 LRP 65947 (Ohio SEA 2009)

Fact or Fiction?

• If the behavior is determined to be a manifestation of a student’s disability, placement may not be changed, even with parent agreement.
Fact or Fiction?

• If a student’s behavior is a manifestation of his disability, a school district must return the student to his original educational placement, even if the student poses an imminent threat to himself or others.
Wayne-Westland Community Schools v. V.S.,
65 IDELR 13 (E.D. Mich. 2015)

Fact or Fiction?

• The “45-day” rule is for 45 school days, and permits school administrators to take disciplinary action regardless of the MDR result.
20 USC 1415(k)(1)(G)

Fact or Fiction?

• The 45-day exception for “serious bodily injury” will apply any time a student commits an assault.
20 USC 1415(k)(7)(D)

Fact or Fiction?

• The 45-day rule carries over from one school year to the next.

Thank You!

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