

*Getting Comfortable With  
Special Education Law:  
A Framework for Working With  
Children With Disabilities*

Second Edition

*Discussion Guides to Accompany  
Hypotheticals in Appendix C*

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## *Introductory Note*

The following guides are just that—guides. They are meant to provide useful information to stimulate thinking but are not exhaustive, and in some cases they offer pedagogical ideas rather than definitive legal answers. The hope is that the practical experience of the instructors and students will generate other ideas and that the guides will provoke fruitful debate when warranted.

## *Chapter 7 Hypothetical: FAPE Under Section 504*

### **Peanut Butter Allergy**

Children who are allergic to peanut butter have been showing up in increasing numbers in schools over the past decade, and numerous news articles have documented the problem this is posing for school districts across the country. To the author's knowledge, however, no court cases (at least no federal court cases) have been decided based on an allegation of discrimination for failure to provide FAPE (or a reasonable accommodation) under Section 504 to a child with a peanut butter allergy. The basic issue in this hypothetical is what the school district's obligation is. There is no definitive legal answer, but the following information and suggestions are meant to contribute to a reasonably thorough discussion of the medical, legal, political, and social issues involved.

The hypothetical assumes that a third grader's severe allergy is a disability under Section 504, but confirming this would actually be the first step in determining the legal responsibility of the school district. If the allergy is not severe and not life threatening, it is doubtful that the child would be considered to have a disability under Section 504. If it is life threatening, however, one could sensibly argue that the child's condition meets the disability definition because it is certainly an impairment that substantially limits a major life activity—that is, eating or even breathing, because what is eaten or inhaled can threaten life itself.

In general, primary responsibility for the health of the third grader rests with the child's family and with the child. Obviously, however, help from the school and other families is not only desirable but socially responsible, regardless of any legal obligation on the part of the school.

School districts have approached this issue in a variety of ways. Some districts have banned peanut butter products in all food preparation in the school cafeteria. Others have required that all peanut butter sandwiches, cookies, and so forth be prepackaged so that school cafeteria workers do not come in contact with the peanut butter. Other districts have prohibited all children in the elementary school from bringing peanut butter products to school, and some have even inspected backpacks and lunch boxes for peanut butter products. Of course, enforcement of bans on what children bring to school largely depends on voluntary compliance. Most bans or searches provoke irate responses from at least a small group of parents,

some of whom have responded in the past by urging that the child with the allergy be required to be taught at home. (Such exclusion would be reminiscent of the illegal exclusion of children with HIV or AIDS.) As a first step, it might be less problematic to attempt to obtain voluntary compliance from the parents of other elementary schoolchildren rather than trying to force parents to forgo a very common and well-liked staple in the school diet of their children. Voluntary compliance alone might be insufficient, however.

A court might determine that measures short of bans are a reasonable accommodation or provide adequately for the child's individual needs. Such possibilities could include peanut-free zones in the cafeteria, the restrictions on cafeteria workers mentioned above, separate eating rooms for children with life-threatening food allergies, and prohibition of all treats brought by parents to share with other children. In fact, for multiple reasons, many school districts now prohibit parents from bringing treats for other children or at least dictate what treats are allowed or disallowed. Other school districts have policies that require the listing of all ingredients in any treat brought to school and inspection of the treats in the front office prior to distribution.

Under FERPA, if a record of the allergy is in the child's educational record (as it logically should be), all school personnel with a legitimate educational interest have a right to know about the child's allergy and the appropriate steps to take to minimize any risk of exposure to peanut butter. To notify the parents of other children in the child's class, however, permission must be obtained from the parent of the child with the allergy. Lacking such permission, children and their parents may still be informed about the seriousness of certain food allergies. They may also be taught to cooperate whenever a parent or a child asks for understanding of an allergy and when a child declines to taste something offered by another child.

The school should definitely have an emergency plan in effect for *each* child with a life-threatening allergy. Each child's plan should be designed individually. Forms should be signed, proper medication (e.g., epinephrine injection with EpiPen) should be on hand, and school personnel should be trained to administer the medication correctly. In addition to the school nurse or other designated health-care provider, each of the child's teachers should know the plan and the correct procedures to follow. The child too should know how to notify someone if help is needed.

Obviously, as the child grows older and moves on to secondary school, he or she is expected to assume more responsibility, and the school's responsibility lessens. Even at this later stage, however, the need for understanding and for creating a safe environment for the student remains important. Sometimes an issue arises as to whether the child can carry his

or her own EpiPen or instead must leave it in the school office or nurse's office. This issue should be resolved after a consultation with the child's physician and parent(s). Age and maturity of the child are considerations.

The following additional sources of information can be helpful:

- [www.nationalhealthmuseum.org](http://www.nationalhealthmuseum.org)
- Nevius, C. W. "One 5-year-old's allergy leads to class peanut ban." *San Francisco Chronicle*, Sept. 9. 2003.
- Food Allergy and Anaphylaxis Network, American Academy of Allergy, Asthma, and Immunology, [www.aaaai.org](http://www.aaaai.org)

## *Chapter 11 Hypothetical: IDEA Evaluation*

This is basically a brainstorming hypothetical, meant to tap the experience of the discussants in exploring possible responses to the questions. Most of the questions are open ended and are intended to encourage a holistic approach to assessment. Discussants are encouraged to come up with other ideas and critique those offered here.

1. *Should Fred have been referred for an IDEA evaluation to meet the LEA's child-find obligation under IDEA? Why or why not? If so, when?*

It might be helpful to address this question in two stages. First, should Fred have been referred in either the sixth or the seventh grade? Second, if not, should Fred have been referred after his suicide attempt in the eighth grade?

It is relatively easy to determine that Fred should have been referred for an evaluation after his eighth-grade suicide attempt, but it is more difficult to determine whether he should have been referred earlier. Would only an alert and sensitive sixth-grade teacher have recognized his spelling and math problems as possible indicators of a learning disability? In all likelihood, Fred would not have been a prime target for disability referral at this stage, even given his fights and unexpectedly sensitive response to the correction of his blackboard math work by his teacher.

In seventh grade, when Fred's school performance deteriorated significantly, he would have been a good candidate for some kind of prereferral intervention as an at-risk student. Nonetheless, many school districts overlook performance difficulties like Fred's because many adolescents without disabilities act out in middle and junior high school, show a lack of interest in their schoolwork, and develop various rebellious attitudes.

There is no definite legal answer to whether Fred should have been referred prior to his suicide attempt, although numerous indications of growing emotional and academic trouble surfaced during seventh grade. After his suicide attempt, however, the school would have been well advised to offer to evaluate him for emotional disturbance (ED), even if Fred was temporarily not a student at the school. (Review how Fred might fit the IDEA definition of ED.)

2. *What prereferral interventions might have been appropriate?*

Many models exist for prereferral interventions, including the involvement of teacher assistance teams (TATs) or other school problem-solving

teams in proposing possible interventions. Even without a team, individual teachers might have considered the use of home notes, peer tutors, behavioral contracts, consultations with Fred's parents, discussions with Fred himself, and so forth. An objective observer (e.g., a school counselor or school psychologist) in Fred's classes might have been able to come up with suggestions for the teachers in the classes in which Fred was not performing and might have been able to suggest various positive behavioral supports. Another option might have been to move Fred to another instructor for his math class. If the school had a drug abuse prevention program, evidence suggests that Fred would have been a good candidate.

3. *Assuming that Fred should have been referred for a special education evaluation, which person or persons in junior high school were (or should be) in a good position to make a referral? Do the parents have any responsibility in this regard?*

One possibility is for individual teachers to have a common point of prereferral (e.g., a school counselor or TAT) so that one person or group could track whether a problem was occurring across classes. (Would this be preferable to referring all misbehaviors only to the school disciplinary official for disciplinary action?) The team or counselor could then be the actual referral source.

Are parents routinely notified of the school's referral and evaluation services for special education and of the school's desire to collaborate with parents when their children develop problems at school? Should this be part of a state's child-find procedures? (What do *your* state's child-find regulations require?) If the parents do not recognize the signs of disability that emerge after elementary school, can they be expected to know what the school's responsibilities are, especially if the teachers indicate that Fred's problems are between Fred and his parents and not within the purview of the school?

4. *Should procedures leading up to referral be any different in secondary school than in elementary school?*

Perhaps some procedures should be added because of the size and complexity of multiple classrooms for multiple subjects. Although the organization of each school varies, many secondary schools already use options such as those previously mentioned (e.g., a central repository of information about deteriorating academic and behavioral performance of a student). The individual teacher at the secondary level is likely to have less overall responsibility for identifying suspected disabilities but should be part of a process that allows such identification. An emerging question is how secondary-school response-to-intervention (RtI) models will address screening, referral, and identification of older students with disabilities.

5. *Design an appropriate IDEA evaluation for Fred. What kind of data would you want to collect? Who should collect it? Given the information prior to his hospitalization, what disabilities might you want to check for? What might you want to rule out? What kind of needs might you identify?*

These questions, in effect, ask for a review of the evaluation requirements in the IDEA regulations and a review of the criteria for a determination of learning disabilities or emotional disturbance. Consider the value of gathering academic and behavioral information from each class, collecting observations and anecdotal information from Fred's parents and teachers, and studying the work samples and available testing data. A developmental history and achievement record that reaches back into his elementary school records could be helpful. The nature of past instructional interventions might shed light on his performance. Ruling out a health, vision, or hearing problem could be important, too.

The chief suspected disabilities would be learning disability and emotional disturbance. A school psychologist who can help to assess the presence of emotional disturbance and an educational diagnostician who understands math disabilities would be important members of the evaluation team. Interviewing Fred might produce relevant information. At a minimum, an evaluation team would include both a general and a special educator and a school psychologist, with input from the parents. Given that the school knew of Fred's hospitalization, it would have been appropriate for the school to have sought parental consent for the release of information from the hospital, especially regarding Fred's psychiatric evaluation.

Fred's needs are clearly both academic and behavioral and might relate to such issues as response to authority figures, self-esteem, and drug use. The information provided in the hypothetical is obviously incomplete, so any answer is somewhat speculative. One might anticipate math goals, compliance goals, and homework completion goals. One might also anticipate the need for some kind of mental health therapy. What other ideas do discussants have?

6. *If Fred were a member of an ethnic minority, would it change your assessment procedures at all? Why or why not?*

The evaluation team would want to know whether English is Fred's native language and explore whether reading comprehension problems might underlie any of Fred's academic and behavioral problems. The team would certainly want to explore such things as whether Fred had received services as an English language learner at any prior point and how literate he was or is in his native language. Team members might want to compare his English vocabulary and decoding skills with his reading fluency and comprehension skills. Because the literacy expectations in

junior high and high school can be considerably more sophisticated than those in elementary school, a bright student's learning disability in reading comprehension or mathematical reasoning (which can be correlated with reading comprehension) is sometimes not identified until quite late. The team would also want to know whether the values of the junior high school classroom(s) are different from the values of his home and primary culture. It might want to explore whether Fred had been subject to any peer harassment that led to the fights in which he started engaging as early as the sixth grade.

## ***Chapter 13 Hypotheticals: Due Process Protections***

### **Preferred Dispute Resolution Options to Avoid Adversarial Proceedings and Resolve Conflict**

The following options reflect the author's priorities, but the tools of principled negotiation should always be considered first in any meeting between parents and the LEA.

1. No invitation is given to parents to contribute input to their child's IEP.
  - A. Parents should ask for, and/or the LEA should offer, another IEP meeting. (Not soliciting parental input is a serious procedural error, amounting to denial of FAPE.)
  - B. Parents could file an SEA complaint to help the LEA understand its obligations.
  - C. Both sides could seek mediation.
2. A difference of opinion exists about the LEA's evaluation of the child.
  - A. Parents should ask qualified professionals for (and the LEA should provide) a full explanation and interpretation of the entire evaluation, a copy of which the parents should have received.
  - B. Parents could seek an independent education evaluation (using appropriate criteria) and share results with the school.
  - C. Both sides could seek mediation.
3. No behavioral objectives are specified in the IEP of a student with emotional disturbance.
  - A. Parents should politely insist on another IEP meeting, pointing out that all areas of individualized need are to be addressed in the IEP. The LEA should comply.
  - B. Parents could file a complaint with the SEA, alleging LEA non-compliance with IDEA.
4. Parents are not notified of their child's placement change until after it occurs.
  - A. Parents could ask for a return to the former placement and a placement meeting. IDEA includes parents on placement teams. The LEA should at least agree to hold an immediate placement meeting with the parents.
  - B. Parents could file an SEA complaint because no prior written notice was provided.

- C. Parents could ask for a reevaluation of their child under the Section 504 regulation requiring a reevaluation before a significant change in placement.
  - D. Both sides could seek mediation.
  - E. Parents could request a hearing (“stay put” in the child’s previous placement should “kick in”).
5. The school asserts that a paraprofessional can appropriately deliver physical therapy services.
- A. The LEA should offer (and parents should agree to) an IEP meeting with the physical therapist and paraprofessional at which training issues, goals, and objectives are thoroughly explored.
  - B. Both sides could seek mediation to uncover underlying interests and see if a mutually acceptable solution is possible.
  - C. Parents could file an SEA complaint, but the decision is likely to produce a judgment call, rather than a clear answer, about IDEA requirements.
  - D. Parents could seek a hearing to obtain a more authoritative interpretation of the law. (A hearing decision contrary to the SEA decision would trump and have more legal authority than the SEA decision.)
6. Parents dispute the LEA’s right to provide a particular service (e.g., travel training) as part of FAPE.
- A. Both sides could seek mediation to resolve this difference in legal interpretation. (The law is arguably unclear as to whether a service deemed necessary by the LEA can be delivered over parental objection, and both sides can point to statutory authority supporting their view. A mediator will simply recommend an outcome that, even if accepted, will have no established legal authority in similar situations involving other parents.)
  - B. Parents could request a hearing to obtain a legal ruling. A resolution session could attempt to reach a settlement first, but this is ultimately a legal question that might need legal resolution through a hearing and possibly litigation.
7. Parents make a claim for attorney’s fees.
- A. Both sides can attempt to negotiate a reasonable fee amount.
  - B. Mediation can be attempted.
  - C. If negotiation and mediation fail, parents must go to court to obtain reimbursement. Parents need to present evidence to support the value of the dollar request. The court will determine reasonable attorney’s fees and can reduce the amount sought by the parents if they cannot present sufficient evidence.

## *Chapter 14 Hypothetical: FERPA*

1. *Did the principal commit any FERPA or IDEA violations? Did the police?*

If a crime has been committed, the principal is entitled to report it to the police. *See* 20 U.S.C. § 1415(k)(6). Disclosing to the police officer that one of the students was a special education student, however, requires parental consent unless a FERPA exception applied. *See* 34 C.F.R. § 300.529(b)(2) and question 2. It is important to recognize that *oral* disclosure of information from a student's educational record is a disclosure from the record; in other words, the disclosure is not limited to written or electronic form. *See* 34 C.F.R. § 99.3.

Furthermore, even if the principal's disclosure to the police officer was authorized under an exception, the police officer, in talking to the parents, should not have alluded to "additional procedures" for one of the students. This information was enough to allow identification of the student as a special education student, and FERPA restricts the redisclosure of this private information without parental consent. *See* 20 U.S.C. § 1232g(b)(4)(B).

Even in situations in which disclosure is allowed, the school must notify the recipient (here, the police officer) that redisclosure is prohibited without parental consent, and there is no indication that the principal did that. Furthermore, if the information is redisclosed without parental consent, the school is prohibited from sharing any education records with the rediscloser for not less than 5 years. *See* 20 U.S.C. § 1232g(b)(4)(B).

2. *Did any exceptions to the nondisclosure requirements justify the principal's statements to the police officer?*

There is no general exception allowing disclosure to the police, although two other exceptions could apply to them in some situations. First is a health or safety emergency, but here no such emergency existed after the handguns were confiscated, so the emergency exception to nondisclosure would not apply.

Second, if possession of handguns by minors is a crime in *your* state (thereby allowing a report to the police), is there also a state statute that allows the release of confidential information to "state and local officials or authorities" if it concerns the ability of the juvenile justice system to effectively serve the student? If not, that exception would not apply, either. If the statute was adopted after November 19, 1974, it must concern the system's ability to serve the student "prior to adjudication." If the statute

was adopted prior to that date, it need not include the phrase “prior to adjudication.” See 20 U.S.C. § 1232g(b)(1)(E).

If the juvenile justice exception applies, then the LEA is permitted to share the disciplinary records, but this exception does not clarify at what point the information can be shared. Some have wondered whether the information is restricted until the police decide to refer the juveniles to the juvenile justice system or until the juvenile justice system seeks the records, but the language of the exception does not seem to be that narrow. A state statute might provide more specifics, however.

3. *Was the police officer acting as an agent or employee of the LEA?*

It appears that he was not, because the information states that a liaison from the police department arrived, which indicates that the officer was not housed on the school campus as part of a school security office or school law enforcement unit.

Moreover, even if the school had its own law enforcement unit, the information identifying one of the students as a special education student was not being maintained only for law enforcement purposes. Instead, the information came from the student’s educational record. Information from an educational record shared with a law enforcement unit retains its character as an educational record. See 34 C.F.R. § 99.8.

4a. *Who actually shared private, restricted information about the special education student with unauthorized persons?*

In all likelihood, both the principal and the police officer shared restricted information. Unless the juvenile justice exception applied, the principal shared it illegally with the police officer, who was not permitted to redisclose identifiable information to the parents of the student who did not have disabilities.

4b. *Can’t one ever orally disclose to parents that a certain student is a special education student?*

Under FERPA, it would seem that the answer to this is no, unless the parents are arguably functioning as school officials with a “legitimate educational interest” in the information (for instance, are assuming some formalized role in the school such as a paraprofessional). In this hypothetical, there is no reason to think that the parents of the student without disabilities would have a right to the information about special procedures for the second student. At least one case, however, has suggested otherwise in disciplinary circumstances where parents of a child victim wanted to know what was being done to discipline the perpetrator. (See the discussion of *Jensen v. Reeves* on p. 228 of the text.) Is the court’s view compliant with FERPA or is it an extralegal view of what common sense would dictate?

## Chapter 15 Hypothetical: FAPE

### Issues and Questions to Be Addressed at Jodi's IEP Meeting

1. *Who should be there?*

- Jodi's general education teacher
- Jodi's current special education teacher and special education providers who have been or would be instructing Jodi using total communication methods
- Someone who can interpret Jodi's current language needs and other instructional implications of the most recent evaluation results
- Jodi's parents
- An ASL interpreter who can interpret for Jodi's parents at the meeting
- The LEA representative
- Probably an educator who is familiar with "Bi-Bi" instructional strategies (i.e., where ASL is the primary language of instruction and English is taught as a second language through reading and writing), because the issue of teaching methodology is so important to the outcome of this IEP meeting.

2. *What kinds of IEP goals should be considered? Are language and communication modes legitimate factors in developing her IEP?*

To align with the general curriculum, Jodi's needs in the areas of reading and writing must be considered. (There is inadequate information from which to determine whether she needs goals in other areas of the general curriculum.) In addition to goals that allow Jodi's involvement and progress in the general curriculum, her unique educational needs relating to her deafness must be addressed. In this regard, the statute requires IEP teams to consider "the concerns of the parents for enhancing the education of their child." 20 U.S.C. § 1414(d)(3)(A)(ii). In the case of a child who is deaf, it also requires the team to consider "the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode." *Id.* at § 1414(d)(3)(B)(iv).

If Jodi will not be achieving at grade level because she cannot yet read or write, what constitutes FAPE for Jodi is likely to be quite different from

what constituted FAPE for Amy Rowley. Remember that the statutory language quoted in the previous paragraph was not part of the statute when the Supreme Court considered Amy Rowley's needs. The newer language strengthens the parents' argument that ASL, as Jodi's primary mode of communication, must at least be seriously considered as the method of direct instruction for her at the moment.

3. *Can Jodi's least restrictive environment (LRE) be determined on the basis of the above information?*

Until all IEP services are specified, the LRE cannot be determined. A lot of additional information about Jodi's functional, developmental, and academic performance is required to determine the services needed in her IEP and the location of the delivery of those services. For instance, we do not know Jodi's level of English language proficiency or her ability to use audition or lipreading to access information. Therefore, we cannot determine if it is realistic for her to be in the general classroom without an ASL interpreter. We do not know whether she is a good candidate for total communication methods. We do not know whether the LEA can gain access to an ASL interpreter and whether there are viable placement options in addition to the either-or options currently on the table.

One additional point to think about: Because the IEP team must consider the parents' concerns about enhancing Jodi's education, is it important to know whether her parents are members of the Deaf Community and how concerned they are about preserving ASL as Jodi's primary language, even if Jodi is ultimately able to learn Signing Exact English (SEE)? Should this kind of parental concern factor into the placement decision? Has IDEA been moving in this direction over time?

Other LRE issues will be addressed in the next hypothetical.

## *Chapter 17 Hypothetical: Placement Issues*

*1a. What relevant information do we have about Terry?*

We have very little relevant information. We know Terry's chronological age, the nature of his disability, and his parents' concerns that his toileting skills need to be addressed.

*1b. What additional information do we need about his past IEP and his proposed new IEP (i.e., what information is particularly relevant to the placement decision)?*

We need to know his past IEP goals and how much progress he has made toward achieving them over what periods of time in what settings. We need to know his current levels of academic, developmental, and functional performance. What symptoms of autism does he manifest? What are his social skills? On which goals and services do the parents and LEA agree? How should a reevaluation be conducted prior to the placement change?

*2. What factors should be considered in determining the LRE for Terry?*

The LRE is based on and follows from the rest of the IEP. The presumption is that Terry should be educated in the school he would attend if not disabled unless the IEP requires a different placement. So first the LEA must consider whether it (the district) could meet Terry's needs and enable him to progress toward realistic and necessary IEP goals without moving him to a different school. This should mean that the LEA will consider whether key aspects of the CHOICES program (assuming it is appropriate) could be brought into Terry's neighborhood school, even if the program in its entirety cannot be. If his neighborhood school placement cannot provide him with needed services to help him meet appropriate goals, then other issues arise. For instance, could toileting skills be implemented in the dual setting proposed by the LEA? What assurances are there that necessary program modifications, supplementary aids and services, and support services would be available in the LEA's proposed general classroom setting? In weighing options, the team can consider any potential harmful effects of the various settings on Terry or on the quality of services he needs. Are there other factors that deserve consideration?

*3. How should the IEP placement team go about seeing if it can reach consensus?*

This dispute initially seems amenable to principled negotiation. A discussion of long-term, underlying interests and goals for Terry could enable

the LEA and parents to determine if or in what ways they have common interests. Principled negotiation should determine whether the LEA and parents can agree that toileting skills, social skills, and speech-language skills are all important. If so, the negotiation can turn to brainstorming how to make progress in all these areas.

Among the options might be the following:

- Retention in Terry's current self-contained placement for most of the day to work on toileting skills and other skills that address his functional, developmental, and academic needs
- Placement of Terry in the regular classroom with an aide for part of the day to enable him to observe and model social and language skills of his peers in the regular classroom
- An increase in the frequency of speech-language services (Is a compromise possible?)
- Addition of a social skills curriculum for recess and playground activities with general education peers
- Postponement of the CHOICES placement in a separate school for 1 year, awaiting the results of implementation of some of the above options
- Staff training to allow importation of the CHOICES program to Terry's school

What other possibilities seem feasible? During any negotiation, the LEA should be prepared to document the research base supporting the effectiveness of the CHOICES methodology.

#### 4. *Who should attend the IEP placement meeting?*

Members of the current IEP team are likely to be in a good position to determine placement. Others, however, may also be valuable participants in the decision. The 2006 regulations state that the placement decision is made by "a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options." 34 C.F.R. § 300.116.

In Terry's case, one would expect that the parents, the LEA representative from the current school, the current special education teacher, the speech-language pathologist, and the proposed special and general education teachers responsible for implementing the CHOICES program would be in attendance. If any one of those persons asks to be excused and the parents and LEA agree and the parents consent in writing, then the person excused must submit written input in advance of the meeting. Knowledgeable parents are likely to (and should) insist, however, that those involved in the CHOICES program be in attendance to answer questions that arise. Do you think Terry should be present for any part of the meeting? If so, why?

## *Chapter 19 Hypothetical: Discipline*

1. *Can Peter's parents stop the first 10-day suspension? If so, on what grounds?*

Generally speaking, IDEA does not provide grounds for stopping the suspension. Suspension of up through 10 school days is not a change of placement and therefore not subject to the panoply of IDEA procedural safeguards. The suspension must be carried out in a nondiscriminatory manner, however, or it will violate Section 504. Reflecting this precept, IDEA indicates that the suspension may be carried out "to the same extent such alternatives are applied to children without disabilities." 20 U.S.C. § 1415(k)(B).

If the LEA did not provide Peter with notice and a chance to respond, Peter's parents could challenge the suspension on the basis of failure to honor the Supreme Court's ruling in *Goss v. Lopez*.

2. *Can Peter's parents stop Peter's removal to an interim alternative educational setting (IAES)? Why or why not?*

No. Under IDEA '04, the LEA has unilateral authority to remove Peter to an IAES for any violation of the code of student conduct. Of course, IDEA also recognizes that the LEA can always determine on its own not to do so, depending on the circumstances.

3. *Can Peter's parents challenge the duration of his removal? How, and on what grounds? What arguments should they make?*

Yes, Peter's parents can challenge the 60-day IAES. First they should request a meeting, pointing out that the manifestation determination (M-D) was made without their involvement, contrary to the clear requirements of the statute. If this does not result in quick approval, they can immediately request an expedited hearing. IDEA sets a 45-day limit on an IAES that results from a drug sale, unless the parent and LEA agree otherwise or the correct M-D team determines that the drug sale was not caused by his disability. Also, the determination of the interim setting was not made by the IEP team, contrary to the statute.

When a new manifestation determination meeting is held, the parents could argue that their son's misbehavior was a manifestation of his disability, requiring a functional behavioral assessment (FBA) and behavioral intervention plan. They could argue that a recognized part of their son's learning disability is an impaired ability to "read his environment" and a known lack of social judgment that results in an excessive desire

to be accepted by his peer group. This argument, however, will not succeed unless the M-D team determines that Peter's sale of marijuana was "caused by or had a direct and substantial relationship to [his] disability" or was the result of the LEA's "failure to implement the IEP." 20 U.S.C. § 1415(k)(1)(E). Given what you know about Peter's circumstances, do you think his parents' argument should prevail?

4. *Regardless of how long Peter may be in an IAES, what kind of educational services should he receive there?*

Peter must continue to receive FAPE, so as to enable him to participate in the general education curriculum and progress toward meeting his IEP goals. "As appropriate," he should receive an FBA and behavioral intervention services or modifications that "are designed to address the behavior violation so that it does not recur." 20 U.S.C. § 1415(k)(1)(D). In Peter's case, do you think it would be appropriate to perform an FBA, regardless of whether his behavior was a manifestation of his disability? If so, what intervention services can you think of that would be designed to address his marijuana sale so that it does not recur?