



SPECIAL EDUCATION SEMINAR

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“School Refusal: What to Do When the Student Says No”

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I. Introduction

II. Identifying School Refusal Behaviors

- A. Failing to identify disability-related school refusal behaviors can result in a determination that the school district did not provide the student with a free appropriate public education (“FAPE”).
- B. A student’s individualized education program (“IEP”) must include a statement of measurable annual goals, including academic and functional goals, designed to:
 1. Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
 2. Meet each of the child’s other educational needs that result from the child’s disability. 34 C.F.R. 300.320(a)(2).
- C. Pocono Mountains School District v. J.W., 70 IDELR 200 (PA Dist. 2017).
 1. In October of 2012, while the student was in fifth grade, the school district offered the student an IEP that included a behavior support plan addressing work refusal, frustration, and physical aggression.

2. During the student's sixth grade year, he struggled with academic performance, organization, and homework/assignment completion. The student frequently slept in class and his conduct interfered with the learning process. The student's October 2013 IEP included a behavior support plan addressing work refusal, frustration, and physical aggression.
3. In April of 2014, the school district offered the student a new IEP following a reevaluation. The IEP identified falling asleep in class as a behavior of concern. The positive behavior support plan again noted the student's behaviors of concern as work refusal, frustration, and physical aggression.
4. An IEP team meeting was held in February 2015 at the parent's request. The February 2015 IEP noted the student's classroom behavior inhibited his ability to learn and that the student refused to complete work and would fall asleep in class. The IEP was revised to permit the student to chew gum or have candy in class to reduce his use of inappropriate language when frustrated.
5. The school district conducted a functional behavioral assessment ("FBA") in May of 2015. The FBA noted the student's concerning behavior included frustration and falling asleep in class. The June 2015 IEP included a positive behavioral support plan to address inappropriate language and in-class sleeping.
6. The impartial hearing officer ("IHO") determined the school district's plans failed to appropriately address the student's aggressive behaviors, mumbling and cursing, and work refusal in sixth and seventh grade. The IHO noted that sleeping in class was an additional work avoidance behavior displayed by the student and documented by the student in April of 2014 but was not the focus of an FBA until May of 2015.

D. K.C. v. Chappaqua Central School District, 75 IDELR 252 (N.Y. Dist. 2019).

1. During the 2011-2012 school year, J.C.T. commonly left classrooms after the instruction portion had ended and just before he was required to do schoolwork. J.C.T. would frequently go to the bathroom, the nurse's office, the guidance counselor's office, or his special education teacher's classroom. When J.C.T. would leave the classroom, his teaching assistant would either follow him or look for him at his usual locations. Staff members would either get J.C.T. to return to the classroom or obtain the schoolwork and try to do the work in an alternate location.
2. The U.S. District Court, Southern District of New York, affirmed the State Review Officer's ("SRO") determination that the school district fulfilled its obligations under the Individuals with Disabilities Education Act

(“IDEA”). To the extent that J.C.T.’s frequent departures were a serious problem, the behavior intervention plan (“BIP”) demonstrated that leaving the classroom was a target behavior that the school district was addressing. The SRO found that the strategies in the plans were sufficient to address the problem.

3. The SRO also observed that according to the IEP, J.C.T. was “overwhelmed by frustration and anxiety, which could cause him to shut down and withdraw form [sic] classroom activities.” As a result, the school district added the services of a behavior consultant and recommended one weekly group session and one weekly individual counseling session.

E. Anthony Wayne Local School District, 81 IDELR 206 (ODE 2022).

1. The student had medical diagnoses of ADHD, migraines, panic attacks, and food allergies. In March 2020, the parent requested a meeting because the parent felt the academic supports were not assisting the student, reporting that he was overwhelmed, stressed, anxious, and having migraines as a result. The parent also shared concerns about the student’s late work, virtual work completed in the late evening, and unwillingness to complete larger assignments.
2. The school district put interventions in place between March 2020 and January 2022 that included a success plan, Learning Commons, Success Center, and no phone in class. The team discussed that the student had experienced “panic attacks” on timed tests since elementary school, was “being bullied,” had “no friends” and “very low confidence.” Additionally, when absent, the student “becomes overwhelmed” and had “educational gaps from transitioning schools.”
3. The student’s grade point average in ninth grade was a 0.710 and a 1.0 in tenth grade. During the 2020-2021 school year, he earned all Fs in the first and second semesters with the exception of physical education, high school health, and English 9.
4. The school and the parent engaged in multiple email communication related to the interventions and the student’s progress, or lack thereof. For example, in June 2021, the school district notified the parent that the student was failing four courses, but could attend summer school for credit recovery. In December 2021, the school counselor told a teacher that the student had yet to stay after school for any help in math, despite having failed both semesters the year before. In February 2022, the Success Center teacher stated that the student did not complete assignments during his time with her despite “prompting and reminders.”

5. Ohio Department of Education (“ODE”) found the school district was in violation of its child find obligations, noting that the student “had a history of failing grades, avoidance behavior, as well as a medical history of ADHD and panic attacks.” ODE further noted that the student had not responded to the school district’s interventions and that there was a “history of parental, teacher, and counselor concern about the Student’s lack of progress.”
- F. Potential red flags may include:
1. Frequently coming to school late;
 2. Frequent unexcused absences;
 3. Many incomplete or missing assignments;
 4. Regularly leaving the classroom and spending class time in another location (for example, nurse’s office, guidance counselor, principal, or another teacher);
 5. In the classroom, but wandering around the room or distracting peers instead of working;
 6. Head down or sleeping during class;
 7. Lack of participation in classroom activities, including tests, quizzes, and other schoolwork that is expected to be completed at school; and
 8. Using computer or cell phone instead of completing assigned work.
- G. Parents can seek compensatory education, reimbursement for a private placement, and attorney’s fees.

A.W. and N.W. v. Bd. of Edn. of the Wallkill Central School Dist., 68 IDELR 164 (N.Y. Dist. 2016).

1. B.W. had a history of behavior difficulties including erratic conduct, lack of focus and self-control, rushed assignments, and poor organizational skills. In May of 2010, the school district provided B.W. with a 504 plan based on an ADHD diagnosis. The school district did not offer B.W. an IEP. In the fall of 2011, B.W.’s parents unilaterally placed B.W. in a private boarding school.
2. In March of 2012, B.W. was evaluated by the school district’s doctors. The school district also reviewed B.W.’s records from his private boarding school. In May of 2012, the school district offered B.W. an IEP under the

category of OHI based on his ADHD diagnosis. The school district was aware that B.W. also had a dyslexia diagnosis, but did not include dyslexia as a basis for the IEP. The school district did not conduct an FBA or offer a BIP.

3. The parents filed a due process complaint and sought tuition reimbursement for the private school. The court ruled in favor of the parents, finding that the school district was aware of B.W.'s diagnoses and behavioral difficulties, including deficiencies in preparation, focus and attention, and academic struggles. The court determined the school district should have had an IEP in place by the start of the 2011-2012 school year. Once the school district did have an IEP in place, the court determined that the IEP remained deficient because the school district "was in possession of information demonstrating that B.W.'s significant interfering behaviors and work avoidance behaviors affected his ability to perform in the classroom. The IEPs [sic] does not adequately address B.W.'s behavioral needs."
4. The court awarded the parents full reimbursement for the cost of tuition at the private boarding school for the 2011-2012, 2012-2013 and 2013-2014 school years, in the sum of \$187,000. In addition, the court determined the parents were entitled to reasonable attorneys' fees and costs.

III. Addressing Work Avoidance

- A. Monitor student progress and reconvene the team to review and revise the student's IEP if the student is not making adequate progress.
 1. Each school district must ensure that the IEP team:
 - a. Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - b. **Revises the IEP, as appropriate, to address:**
 - (1) **Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;**
 - (2) The results of any reevaluation conducted;
 - (3) Information about the child provided to, or by, the parents;

(4) The child’s anticipated needs; or

(5) Other matters.

O.A.C. 3301-51-07(I)(2)(a). (Emphasis added.)

2. District of Columbia Public Schools, 123 LRP 33279 (D.C. SEA 2023).

- a. The school district conducted a reevaluation of the student in 2018. The evaluation report documented that the student “continues to struggle with impulse control, following directions, communication, social interaction, aggression, and task completion.” According to the evaluator, the student “was not engaged, failed to follow directives, did not care about doing schoolwork, appeared to have issues organizing, initiating, or beginning work, and had difficulty adapting to changing situations.”
- b. The school district conducted an FBA in 2019 that indicated that, every day, the student was defiant, threw items around the classroom, cursed, attempted to hit, and engaged in antagonizing behaviors, among other things. The student would elope from the classroom and not do any work unless the teacher stood next to the student. A BIP followed. The student did not show any progress during the 2020-2021 school year, with the exception of one semester of his speech and language goal.
- c. During the first part of the 2021-2022 school year, the student made some improvement in reducing the frequency and intensity of the disruptive behavior. However, it was difficult to get the student to perform most tasks. The student often sat at his desk with his head down, or aimlessly walked around the classroom avoiding work. The district conducted another FBA in December of 2022. The student’s behaviors were described as disengagement from the academic environment and antagonizing peers. The behaviors largely occurred during independent work, especially if the student was unable to grasp the material.
- d. The IHO found the school district failed to provide the student with FAPE. According to the IHO, the student’s need for a smaller class environment and more specialized instruction was evident in the 2018 re-evaluation. Over the subsequent school years, the student did not make academic progress in the general education setting. The school district argued the student’s absenteeism was the cause of his problems at school, but the IHO agreed with

witness testimony that the student's absenteeism was the result of the student's inability to function in a large general education setting.

- B. Accurate data collection and other documentation is necessary to demonstrate that the school district has appropriately addressed school avoidance behaviors.

Coleman v. Wake Cty. Bd. of Edn., et al., 76 IDELR 5 (N.C. Dist. 2020).

1. N.C. was an elementary school student diagnosed with autism spectrum disorder ("ASD") and a mild intellectual disability. N.C.'s parent was involved in all of N.C.'s IEP team meetings and "provided extensive feedback" to school staff. IEP meetings were lengthy. They also tended to be contentious and emotional.
2. The school district retained a behavior specialist experienced in working with autism and behavioral/emotional needs to provide support, training, and recommendations to staff who worked with N.C. N.C. had a BIP that included numerous strategies for addressing anxiety and fearfulness, including use of sensory items and sensory breaks, positive directions in a calm voice, visual calm down strategies and instructions in how to use them, and use of a calm down area in the classroom. N.C.'s BIP was consistently implemented, including extensive calming routines, strategies, and spaces. Daily reports showed N.C. met behavioral expectations on most days leading up to December 2014.
3. Beginning on December 9, 2014, N.C.'s parents started bringing N.C. to school between 12:00 p.m. and 1:00 p.m. each day to avoid N.C.'s special education classes, believing doing so relieved N.C.'s anxiety. Contemporaneous daily reports from January to June 2015 indicated that N.C. engaged in various disruptive behavior, including yelling, physical aggression, and school avoidance. The parents filed a due process complaint, alleging the school district failed to provide N.C. with FAPE.
4. The court held in favor of the school district, finding that the IEP and BIP both were reasonably calculated and appropriately implemented to enable N.C. to make appropriate progress in light of his circumstances. The court further stated that "[a]ny lack of educational progress or manifestation of behavioral problems by N.C. during the relevant period cannot be fairly ascribed to [the school district] given [parents'] willful failure to present N.C. for core specialized academic instruction integral to N.C.'s IEP."

IV. Responding to Chronic Absenteeism

A. Comply with Ohio's attendance laws.

1. Habitual truant.

a. A child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for 30 or more consecutive hours, 42 or more hours in one school month, or 72 or more hours in a school year. R.C. 2151.011.

b. What is a "legitimate excuse"?

Per the Department of Education and Workforce is Guidance, R.C. 3321.04 and O.A.C. 3301-69-02 outline the situations in which an absence can be excused. Districts are encouraged to add to the list of excused absences to adapt their attendance policies to fit the needs of their students and families.

c. What does your school district's policy include as an excused absence?

2. Excessive absences.

A child of compulsory school age who is absent with a nonmedical excuse or without a legitimate excuse for:

a. 38 hours or more in one school month, or

b. 65 or more hours in a school year.

R.C. 3321.191.

3. Notice requirements.

a. The attendance officer shall examine any case of supposed truancy and shall warn the child, if found truant, and the child's parent, guardian, or other person having care of the child, in writing, of the legal consequences of being truant.

b. When any child of compulsory school age, in violation of law, is not attending school, the attendance officer shall notify the parent, guardian, or other person having care of that child of the fact, and require the parent, guardian, or other person to cause the child to attend school immediately.

c. In the event that a child of compulsory school age is absent with a nonmedical excuse or without legitimate excuse for 38 or more hours in one school month, or 65 or more hours in a school year, the attendance officer of that school shall notify the child's parent, guardian, or custodian of the child's absences, in writing, within seven days after the date after the absence that triggered the notice requirement. At the time notice is given, the school also may take any appropriate action as an intervention strategy contained in the policy developed by the board.

4. Absence intervention teams.

a. The purpose of an absence intervention team is to establish a student-centered absence intervention plan for every child who has been deemed habitually truant by identifying specific barriers and solutions to attendance.

b. The membership of each absence intervention team may vary based on the needs of each individual student.

(1) The following members must be included:

- (a) A representative from the child's school;
- (b) Another representative from the child's school who knows the child; and
- (c) The child's parent or parent's designee, or the child's guardian, custodian, guardian ad litem, or temporary custodian.

(2) The following members may be included:

- (a) A school psychologist,
- (b) A counselor,
- (c) A social worker, or
- (d) A representative of a public or nonprofit agency designed to assist students and their families in reducing absences.

- c. Within **10 days** after the absences of a student surpass the threshold for a habitual truant, the law requires school officials to assign the student to an absence intervention team. R.C. 3321.19.
- d. Within **14 school days** after the assignment of a student to an absence intervention team, the team is required to develop an intervention plan for that student in an effort to reduce or eliminate further absences. R.C. 3321.191.
- e. Within **7 days** after the plan's development, the school must make reasonable efforts to provide the student's parent, guardian, custodian, guardian ad litem, or temporary custodian with written notice of the plan. R.C. 3321.191.
- f. The school must make three (3) meaningful, good faith attempts to secure participation of the parent, guardian, custodian, guardian ad litem, or temporary custodian.
- g. If **7 school days** elapse and the student's parent, guardian, custodian, guardian ad litem, or temporary custodian fails to respond to the attempts to secure participation, the school shall do both of the following:
 - (1) Investigate whether the failure to respond triggers mandatory reporting to the public children services agency for the county in which the child resides; and
 - (2) Instruct the absence intervention team to develop an intervention plan for the child notwithstanding the absence of the child's parent, guardian, custodian, guardian ad litem, or temporary custodian.

R.C. 3321.191.
- h. If a student becomes habitually truant within **21 school days** prior to the last day of instruction of a school year, the school *may*, in its discretion, assign one school official to work with the child's parent, guardian, custodian, guardian ad litem, or temporary custodian to develop an absence intervention plan during the summer. R.C. 3321.191.
 - (1) If the school selects this method, the plan shall be implemented not later than **7 days** prior to the first day of instruction of the next school year.

(2) In the alternative, the school district or school may toll the time periods to accommodate for the summer months and reconvene the absence intervention process upon the first day of instruction of the next school year.

i. The law provides an exemption from the requirement to assign habitually truant students to an absence intervention team for a school with a chronic absenteeism percentage that is less than 5%. R.C. 3321.19.

5. Filing of complaint in Juvenile Court.

a. The attendance officer shall file a complaint not later than **61 days** after the date the plan was implemented, if the child has refused to participate in, or failed to make satisfactory progress on the intervention plan or alternative to adjudication. R.C. 3321.191.

b. The attendance officer is also required to file a complaint jointly against the child and the parent, guardian, or other person. R.C. 3321.19.

c. Upon the filing of a complaint that is based solely on habitual truancy, the court is required to consider an alternative to adjudication, including actions that constitute a method to divert the child from the juvenile court system. By law, the court shall consider the complaint only as a matter of last resort. R.C. 2151.27.

B. Address attendance issues as an IEP team.

1. Each school district must ensure that the IEP team:

a. Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

b. **Revises the IEP, as appropriate, to address:**

(1) **Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;**

(2) The results of any reevaluation conducted;

(3) **Information about the child provided to, or by, the parents;**

- (4) The child's anticipated needs; or
- (5) **Other matters.**

O.A.C. 3301-51-07(I)(2)(a). (Emphasis added.)

- 2. The public agency must ensure that the IEP Team for each child with a disability includes:
 - a. The parents of the child;
 - b. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
 - c. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
 - d. A representative of the public agency who:
 - (1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (2) Is knowledgeable about the general education curriculum; and
 - (3) Is knowledgeable about the availability of resources of the public agency.
 - e. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
 - f. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - g. Whenever appropriate, the child with a disability.

34 C.F.R. 300.321(a).

3. R.R. and W.R. v. Greenwich Board of Education, 83 IDELR 82 (CT Dist. 2023).
 - a. During the 2018-2019 school year, M.R. was only at school for 13 full days out of the first 25 days of the school year due to absences or tardies. As a result, the school district put together a School Avoidance Plan (“SAP”) and met with the parents to discuss it. The SAP included a “plan for nighttime and morning routines for [the] parents to implement at home.”
 - b. In addition, the student’s IEP team met to review and revise her IEP, including discussing and adopting the SAP. The team further revised the goals and objectives of the IEP to expressly address attendance and academic performance. “The plan called for, among other things, that if the Student is experiencing school avoidance/refusal, the parent will contact [the school district] to access support resources... [School district] staff will then call home and speak to the Student, providing specific expectations for Student, and if those interventions are not successful, parent will contact 2-1-1 (clinical support services available to CT families) and school staff will make a home visit if there were any prolonged periods of school refusal/avoidance.”
 - c. The parent alleged the school district failed to provide M.R. with FAPE and unilaterally enrolled her in Winston Prep, a private school. M.R.’s attendance issues continued at Winson Prep due to her “perfectionism and getting things ready in the morning... preparing her breakfast and her lunch.” These were items that the school district’s SAP addressed by providing a structured schedule for M.R. to follow that specifically allocated time to eat breakfast and get lunch ready before school.
 - d. The U.S. District Court, Connecticut, affirmed the IHO’s ruling in favor of the school district. The Court noted that when M.R.’s tardiness and absences became an issue interfering with the IEP’s effectiveness, the IEP team “met again and provided a set plan to encourage and ensure M.R.’s punctual attendance.” Additionally, the record showed that “Winston used a strategy similar to that designed by [the school district] – over the course of months – to get M.R. to overcome similar attendance issues at Winston Prep.”

V. Conclusion