

Module 7: Free Appropriate Public Education (FAPE)

Perry A. Zirkel
University Professor Emeritus of
Education and Law at Lehigh University

The Wyatt Special Education Advocacy Training
(WSEAT) A Resource of PWSA (USA)
www.pwsausa.org



FAPE FOR STUDENTS WITH PWS: THE LEGAL KEYSTONE

PERRY A. ZIRKEL

[www.perryzirkel.com]

© 2017

MODULE PREVIEW

- Individuals with Disabilities Education Act (IDEA)
- “free appropriate public education” (FAPE) – its dimensions and overlaps, including remedies
- students with PWS - case law
- “take-aways” and references

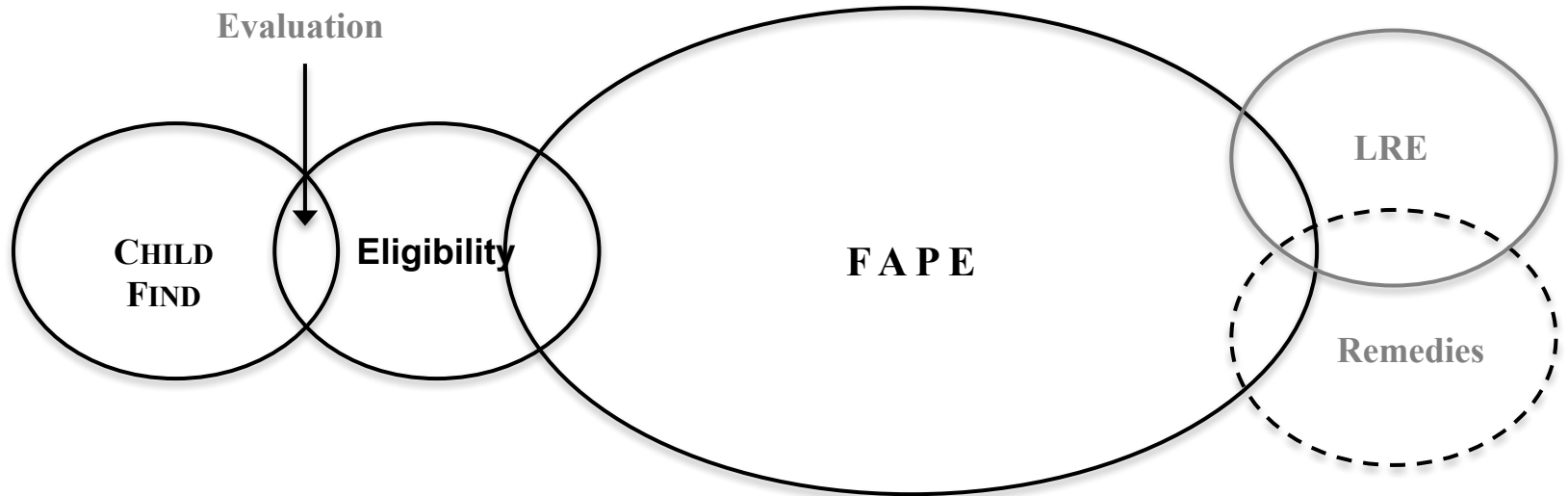
THE IDEA

- funding act, with many procedural requirements – e.g., individualized education programs (IEPs)
- originally enacted in 1975
- successive amendments, most recently in 2004
- followed by 2006 IDEA regulations

SEQUENTIAL STEPS OF IDEA

- child find and eligibility
- free appropriate public education (FAPE)
- least restrictive environment (LRE)
- remedies: tuition reimbursement & compensatory education

FAPE AS THE HUB, OR KEYSTONE



THE EVOLUTION OF FAPE

- *Rowley* (1982): procedural + substantive
- the *Rowley* lower court progeny: procedural 2-step standard
- IDEA 2004: codification of 2-step
- *Endrew F.* (2017): refinement of substantive standard
- present: implementation issues

DIMENSIONS OF FAPE

- **procedural: 2-steps**
 1. procedural requirement and violation
 2. student or parent loss
- **substantive:**
 - reasonable calculation of appropriate progress
- **implementation: failure**
 - per se, material, or material+benefit/progress
- **implementation: capability**

REMEDIES FOR DENIAL OF FAPE

- declaratory relief
- prospective order
 - e.g., IEP meeting for revisions
 - e.g., training
- retrospective orders
 - tuition reimbursement
 - compensatory education
- plus, attorneys' fees

IDEA's Two DECISIONAL AVENUES

- adjudicative
 - due process hearing by impartial hearing officer (IHO) → judicial decisions
- investigative
 - state complaint procedures (CP)
→ mostly w/o appeal

SPECIAL IMPORTANCE OF FAPE FOR STUDENTS WITH PWS

- eligibility often not at issue
- frequent issues of food security, behavior interventions, functional academics, and staff training
- individual differences

FAPE PROCEDURAL: PWS RULINGS

[- = against parent; + = in favor of parent]

- Step 1:

- *Kern High Sch. Dist.* (Cal. IHO 2004) – neither all sp. ed. teachers nor sch. nurse

- Step 2:

- *Anaheim Union High Sch. Dist.* (Cal. IHO 2000) – nonprejudicial written offer

- *Student with a Disability* (Ind. CP 2009) – opportunity for meaningful parental participation

- + *Green Local Sch. Dist.* (Ohio IHO 2013) – predetermination for 4th IEP

FAPE SUBSTANTIVE: PWS “-” RULINGS

- *Anaheim (supra)* – reasonably calculated
- *New Hope-Solebury Sch. Dist. (Pa. RO 2003)* – Chevrolet > Cadillac
- *Broward Cty. Bd. of Educ. (Fla. IHO 2010)* – continuous fine-tuning
- ***K.C. v. Nazareth Sch. Dist. (E.D. Pa. 2011)*** – transition services, including travel training
- ***Zachary G. v. Sch. Dist. No. 1 (D. Colo. 2016)*** – food security, training, BIP, transitions, fine-tuning

FAPE Substantive: PWS “+” Rulings

- ⊕ *Kern (supra)* – functional academics and behavior interventions (+ LRE) → prospective order for revised IEP
- ⊕ *Anchorage Sch. Dist. (Alaska IHO 2005)* – interim alternate ed. setting – transitions → interim services pending prompt revision
- ⊕ *Greene Local Sch. Dist. (supra)* – food security, behavior interventions, and teacher/staff PWS training → tuition reimbursement for 1 of 4 years

FAPE SUBSTANTIVE: PWS “+” RULINGS (CONT.)

- + *Stoneham Sch. Dist.* (Mass. IHO 2013) –
1:1 aide (IEP modification only, plus
substitute consent for reevaluation)
- + *South Western Sch. Dist.* (Pa. IHO 2016) –
food security → IEP revisions + data
collection on rel’p between food images
and child’s behavior + resulting FBA

FAPE FAILURE-TO-IMPLEMENT: PWS RULINGS

- ☐ ***Kern (supra)*** – violation for 2nd of 2 IEPs
→ compensatory education
- ☐ ***Broward Cty. (supra)*** – violation for PWS training → prospective order but not tuition reimbursement (due to separate FAPE ruling)
- ☐ ***K.C. (supra)*** – PT, OT, and executive coaching - delays due to parents and, in any event, no loss to student or parents

FAPE ABILITY-TO-IMPLEMENT: PWS RULINGS

- ▣ *Broward Cty. (supra)* – parent did not meet burden of proof
- ▣ *Zachary G. (supra)* – lack of preponderant proof

“TAKE AWAYS” FOR PWS PARENTS

- procedural FAPE: consider CP alternative
- substantive FAPE: moderate your legal expectations but focus on individualized calculation of progress
- implementation: consider CP alternative or jurisdictional standard
- overall: be legally literate but focus on effective collaboration and professional norms

CASE REFERENCES*

[Alien v. Dep't of Educ., State of Haw., 56 IDELR ¶ 297 (D. Haw. 2011) - S.O.L.]

Anaheim Union High Sch. Dist., 102 LRP 3416 (Cal. IHO 2000)

Anchorage Sch. Dist., 45 IDELR ¶ 23 (Alaska IHO 2005)

Broward Cty. Sch. Bd., 111 LRP 44017 (Fla. IHO 2010)

[Fairfield Bd. of Educ., 113 LRP 2965 (Conn. IHO 2012) - IEE reimbursement]

Green Local Sch. Dist., 113 LRP 10259 (Ohio IHO 2013)

K.C. v. Nazareth Sch. Dist., 806 F. Supp. 3d 806 (E.D. Pa. 2011)

Kern High Sch. Dist., 105 LRP 5081 (Cal. SEA 2004)

New Hope-Solebury Sch. Dist., 39 IDELR ¶ 146 (Pa. RO 2003)

South Western Sch. Dist., 116 LRP 28340 (Pa. IHO 2016)

Stoneham Pub. Sch., 64 IDELR ¶ 125 (Mass. IHO 2013)

Student with a Disability, 110 LRP 53282 (Ind. CP 2009)

Zachary G. v. Sch. Dist. No. 1, 68 IDELR ¶ 222 (D. Colo. 2016)

*The citations in bold font are court decisions, and those in brackets are not specific to FAPE.

SECONDARY SOURCES

Here is a sampling of relevant journal articles from perryzirkel.com:

Zirkel, P.A. (2015). Special education law: Key IDEA components. *Teacher Education and Special Education*, 38, 263–275.

Zirkel, P.A. (2017). An adjudicative checklist of the four criteria for FAPE under the IDEA. *West's Education Law Reporter*, 346, 18–20.

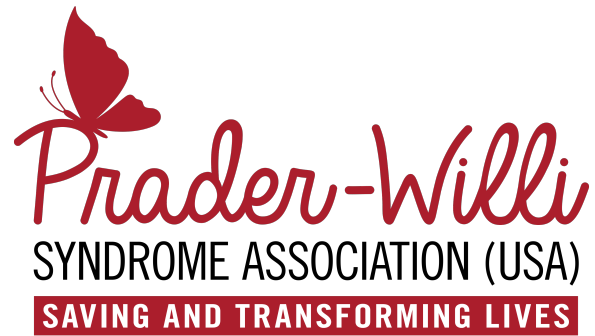
Zirkel, P.A. (2017). The complaint procedures avenue of the IDEA. *Journal of Special Education Leadership*, 30(2), 88–97.

Zirkel, P.A. (2017). Failure to implement the IEP: The third dimension of FAPE under the IDEA. *Journal of Disability Policy Studies*, 28, 174–179.

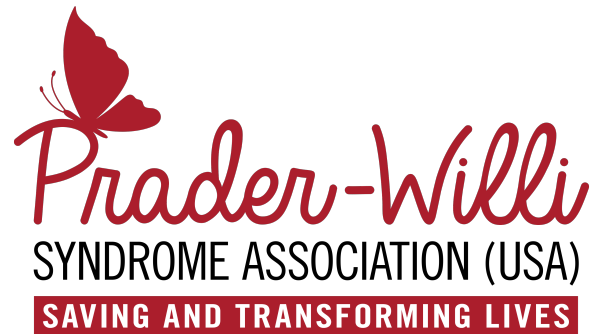
Zirkel, P.A. (2017). The Supreme Court's decision in *Endrew F. v. Douglas County School District RE-1*. *West's Education Law Reporter*, 341, 545–554.

Next Steps

- For other school resources visit www.pwsausa.org.
- If you need assistance with a school issue, please contact PWSA (USA) at **800-926-4797** and ask to speak to a Family Support Counselor.



**THIS CONCLUDES
THIS TRAINING WEBINAR.
THANK YOU FOR ATTENDING.**



DISCLAIMER

While every effort is made to ensure that the training materials provided in this module are updated with the most recent best practices and developments in the field of special education advocacy and supporting students with Prader-Willi syndrome in school settings this may not always be possible. New developments may occur and not be included in this module of training until it is updated. Additionally, some statements and views in these materials may represent the opinions of the presenter and not necessarily the views of the Prader-Willi Syndrome Association (USA). The information in this training is not intended as legal advice and it should not be relied upon or used for legal purposes. The Prader-Willi Syndrome Association (USA) expressly disclaims any liability for any direct or indirect damage resulting from the use of this training as a whole or parts thereof.

No portion of the WSEAT is reproducible without the written permission of PWSA (USA) and/or the presenters of each module.