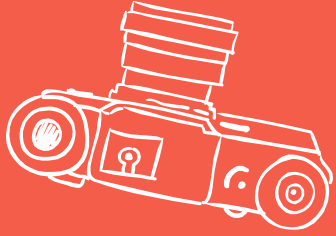


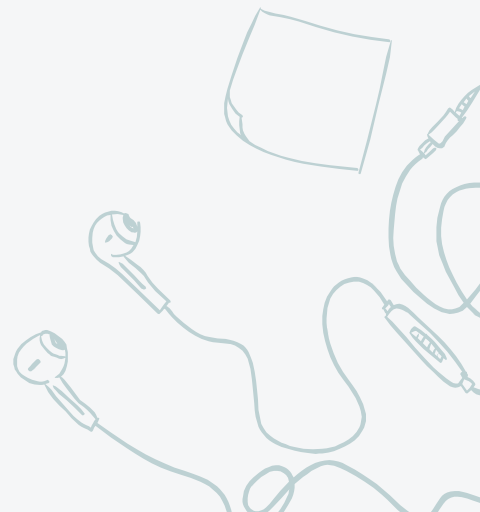
LEGALLY DEFENSIBLE IEPS

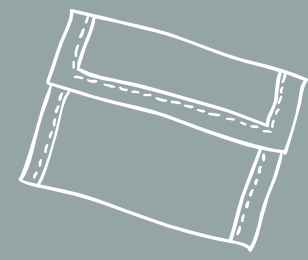
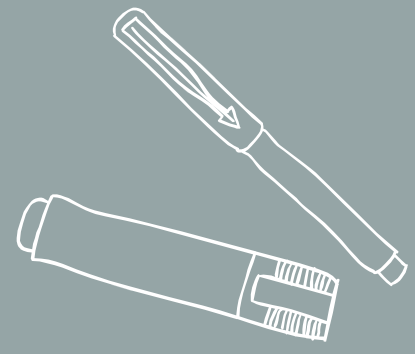




AGENDA

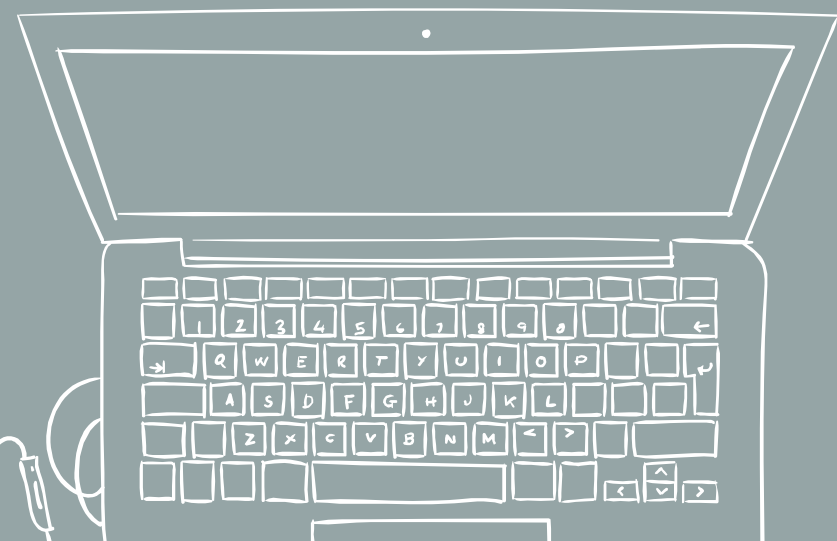
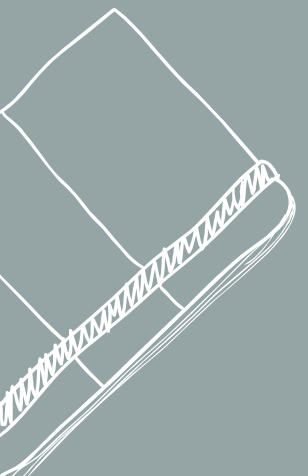
- X Defining FAPE
- X Scheduling & Participants
- X Drafting the IEP
- X Implementing the IEP
- X What to Do When/Q & A's





1.

DEFINING FAPE






SOURCES OF LAW






Statutes & Regulations



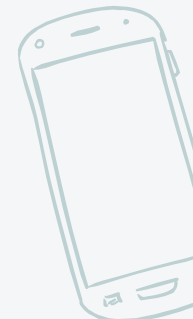
- Federal:
 - United States Code (Individuals with Disabilities Education Act)
 - Code of Federal Regulations
- State:
 - California Education Code
 - California Code of Regulations



Case Law (judicial decisions)



Also: Guidance from Administrative/Regulatory Agencies (ED, CDE, OSERS, OSEP, OCR, DOJ, FCPO)



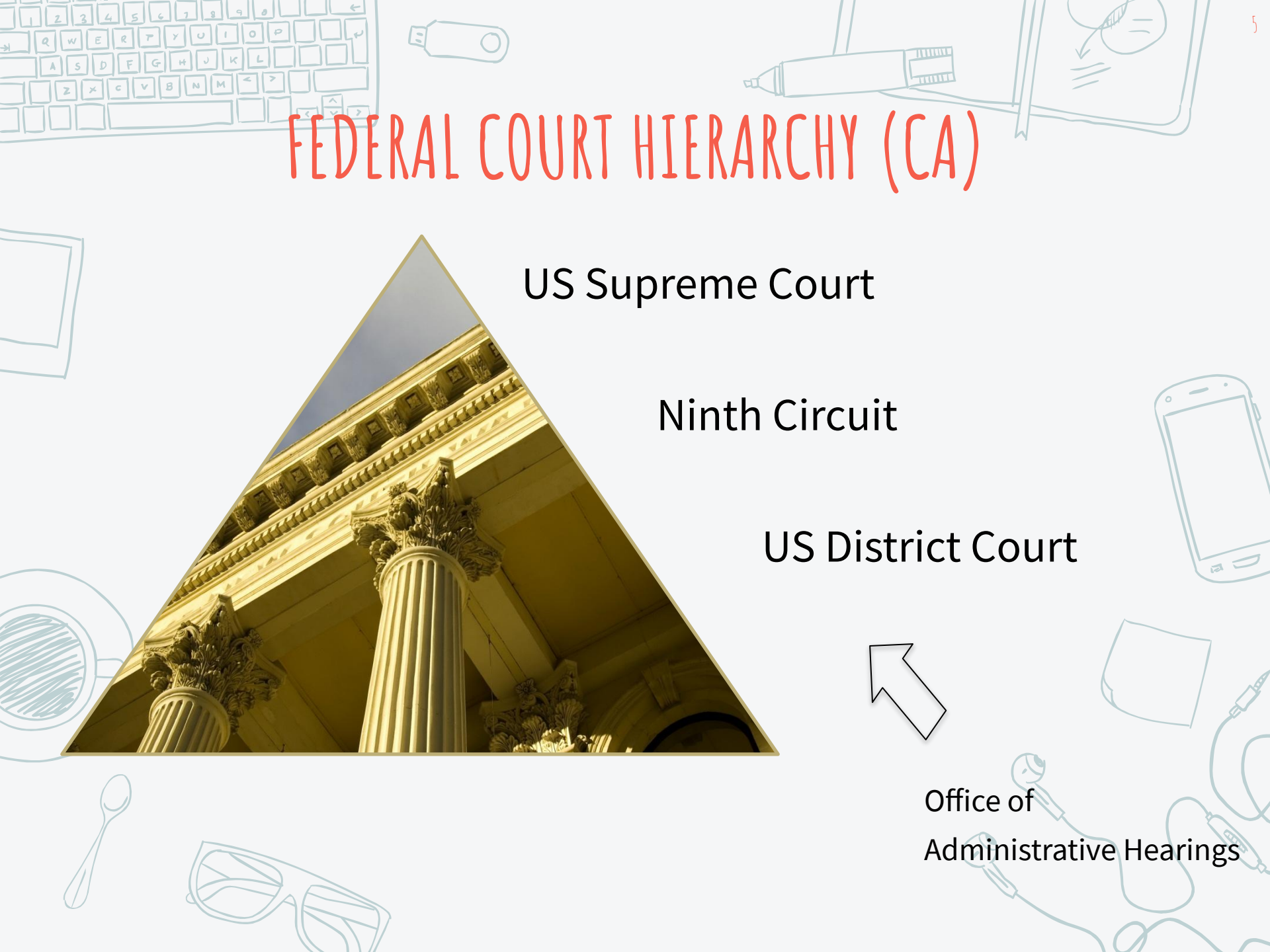
FEDERAL COURT HIERARCHY (CA)

US Supreme Court

Ninth Circuit

US District Court

Office of
Administrative Hearings



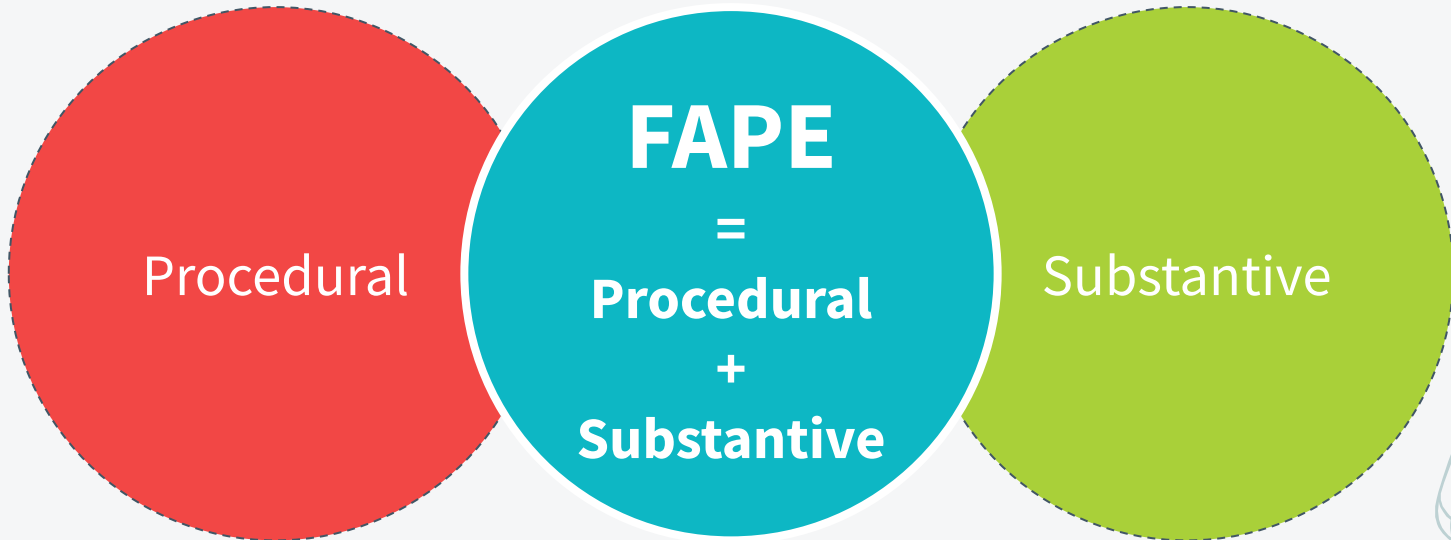


FREE APPROPRIATE PUBLIC EDUCATION

- ✗ Provided at public expense, no cost to parents
- ✗ Meet standard of state educational agency
- ✗ Include appropriate education at preschool, elementary, or secondary school in state involved
- ✗ Provided in conformity with IEP under IDEA

20 U.S.C. § 1401(9).

FREE APPROPRIATE PUBLIC EDUCATION





FREE APPROPRIATE PUBLIC EDUCATION



Procedural:

- Did the LEA comply with the procedures set forth in the IDEA?



Substantive:

- Is the IEP **reasonably calculated to enable the child to receive educational benefits?**



FREE APPROPRIATE PUBLIC EDUCATION

× Procedural: amounts to denial of FAPE when:

- They impede a child's right to FAPE
- Significantly impede parent's opportunity to participate in the decision-making process
- They cause a deprivation of educational benefit.

California Education Code § 56505(f)(2)

FREE APPROPRIATE PUBLIC EDUCATION



Substantive: Student's program must:

- Meet the student's unique needs
- Be reasonably calculated to provide educational benefit
- Comport with the student's IEP
- Ensure placement in the least restrictive environment (LRE)

34 CFR § 300.114; 34 CFR § 300.320



FREE APPROPRIATE PUBLIC EDUCATION



Must provide “basic floor of opportunity”

Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982)

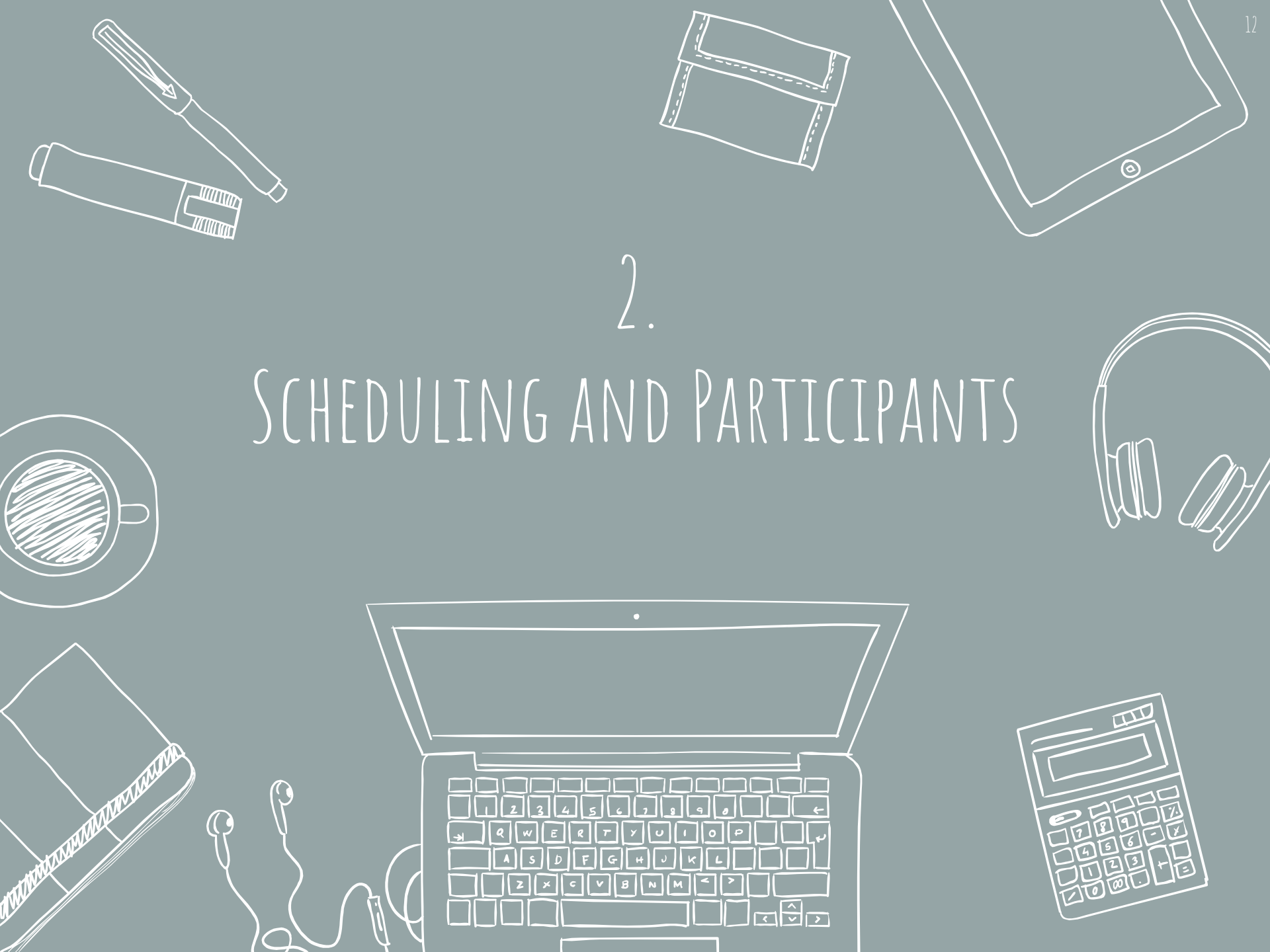


IEP offer must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Endrew F. v. Douglas County School District, 137 S.Ct. 988 (2017)

2.

SCHEDULING AND PARTICIPANTS





REQUIRED PARTICIPANTS



Parent(s)

- *Invite both where appropriate (e.g., divorce, separation)*
- *Both entitled to participate, unless court order stating otherwise*
- *Considerations: Video/phone participation*



Special Education Teacher or Provider – at least one

- *Don't forget service providers*



Regular Education Teacher of the Child – at least one

- *If the pupil “is or may be” participating in gen ed*
- *This covers almost all students!*

California Education Code § 56341(b)



REQUIRED PARTICIPANTS



District representative who is:

- Qualified to provide or supervise the provision of specially designed instruction, and
- Knowledgeable about the general curriculum, and
- Knowledgeable about the availability of resources

---> *Avoid dual role fulfillment*



A person who assessed the student or who is knowledgeable and can interpret assessment results

---> *Dual role okay*




Other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate (at discretion of Parent/LEA).



MUST ALSO BE INVITED...



- 
- ✗ Student, whenever appropriate
 - Must be invited if postsecondary goals and transition services are being discussed (approx. age 15 and older)
 - ✗ Agencies likely to be responsible for providing or paying for transition services (with the consent of the parent/adult student)
 - ✗ Part C Early Intervention Service Coordinator, if parent requests they be invited to an initial IEP team meeting

California Education Code § 56341(d), (i)





*Don't forget to invite interpreter when needed





EXCUSALS





- 
- ✗ Parents have to agree in writing
 - ✗ Required whether the team member is absent from the whole meeting or just part of the meeting
 - ✗ If the team member's area of curriculum or services are being discussed or modified in the meeting, then:
 - The parent, in writing, and the District, must consent to the excusal after conferring with the team member; and
 - The IEP team member submits, in writing, to the parent and the IEP team, input into the development of the IEP **prior to the meeting**.
- 



Consent should be obtained before the meeting! Reschedule if necessary.

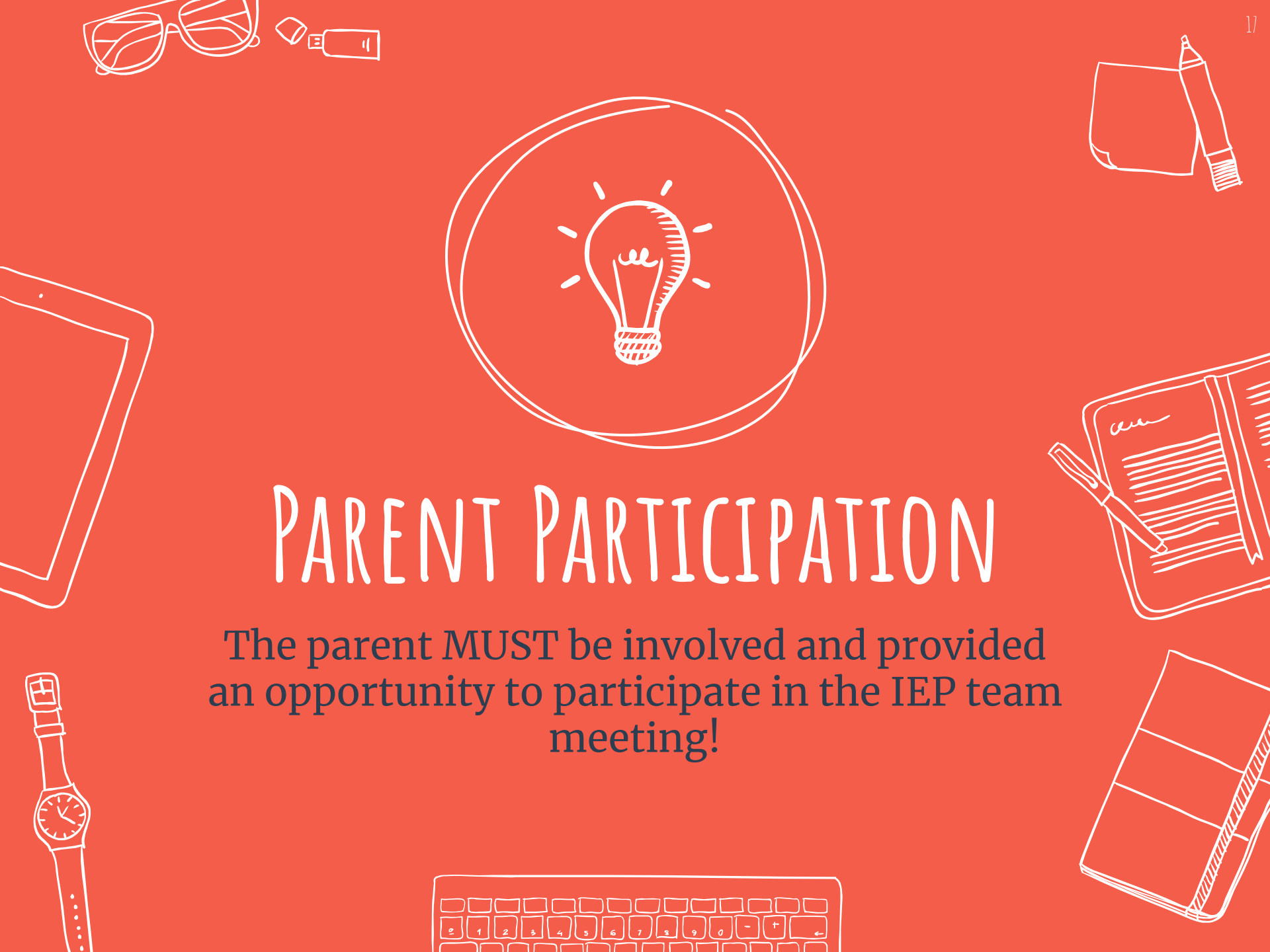
California Education Code § 56341(f)-(h)





PARENT PARTICIPATION

The parent **MUST** be involved and provided an opportunity to participate in the IEP team meeting!



PARENT PARTICIPATION

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as-

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and;
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 C.F.R. § 300.322

PARENT PARTICIPATION

- ✘ Parental involvement in the “creation process” requires the LEA to include the parents in an IEP meeting unless they affirmatively refused to attend.
- ✘ After the fact parental involvement is NOT enough.
- ✘ Protection of parental participation is “[a]mong the most important procedural safeguards” in the Act.

Doug C. v. State of Hawaii Dept. of Educ. (9th Cir., Jun 2013) 720

F.3d 1038; 61 IDLER 91

SCHEDULING & LOGISTICS

- ✗ Schedule **at least 10 calendar days** before the meeting
 - Provide written meeting notice
 - Document all scheduling efforts
- ✗ Draft IEP document prior (but also be flexible)
 - If providing a copy to parents, don't include service page
- ✗ Documents to bring: work samples, progress reports, gradebook
- ✗ Use a meeting agenda
- ✗ Have needed materials ready/appropriate room reserved
 - For conference calls: phones that can reach the table if on speaker
 - Computer/printer access
 - Audio-recording equipment if needed

MEETING TYPES

- ✗ Initial
- ✗ Annual
- ✗ Triennial
- ✗ Amendment
 - Purpose (e.g., Parent Request, 30-day, Transition to Kindergarten, etc.)
 - Non-Meeting Amendments
- ✗ Include “transition” (post-secondary) as purpose where appropriate

See also: Interim IEPs (administrative)

MEETING TYPES



Review and revision of IEPs. Each public agency shall ensure that the IEP team-

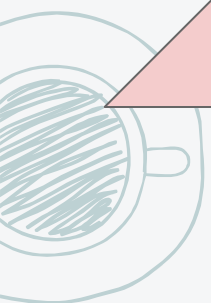
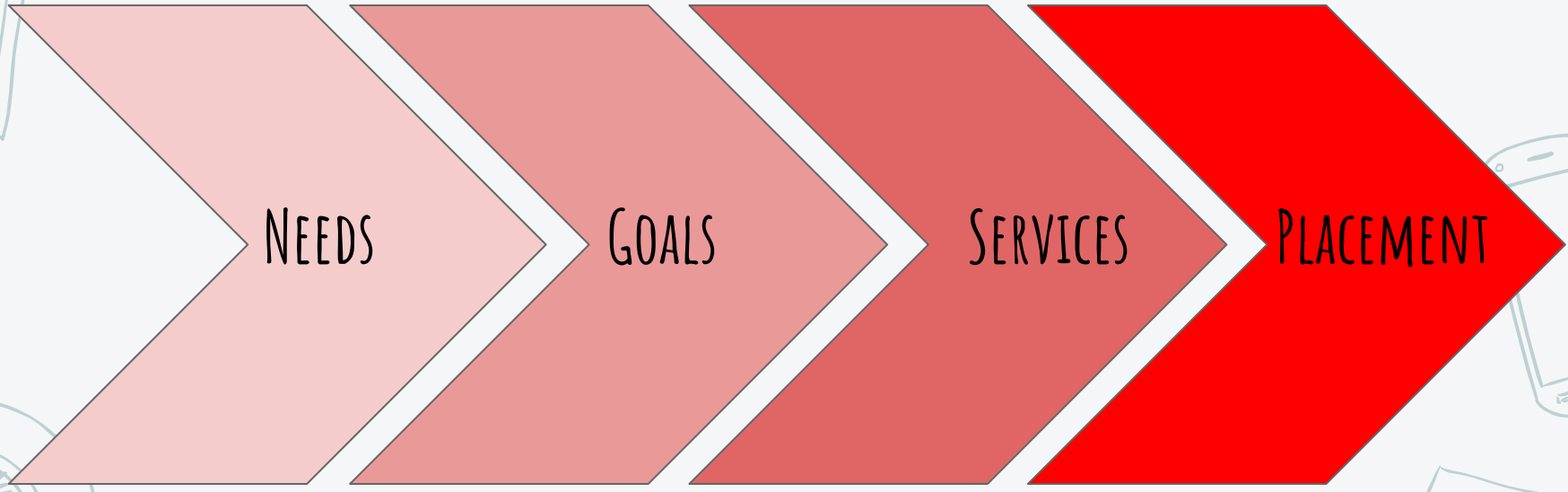
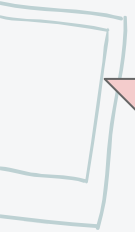
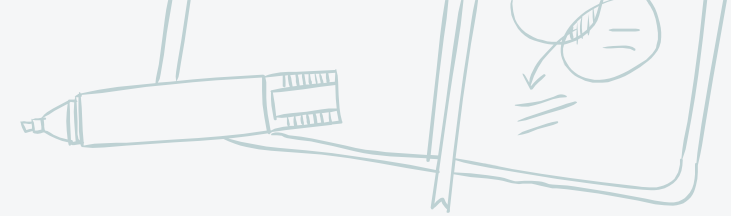
- (1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
- (2) Revises the IEP as appropriate to address-
 - (i) **Any lack of expected progress toward the annual goals** described in § 300.320(a)(2), **and in the general curriculum**, if appropriate;
 - (ii) The results of any reevaluation conducted under § 300.303;
 - (iii) Information about the child provided to, or by, the parents, as described in 300.305(a)(2);
 - (iv) The child's **anticipated needs**; or
 - (v) Other matters.

20 U.S.C. § 1413(a)(1), 1414(d)(4)(A)); 34 C.F.R. § 300.324(b)

3.

IEP DOCUMENT





OPENING THE MEETING

- ✗ Purpose of the Meeting
- ✗ Introductions
- ✗ Time constraints & excusals
- ✗ Agenda & ground rules (if needed)
- ✗ Offer Parent Rights
 - Required at initial/annual
 - Good to offer always
 - Record in meeting notes
 - Be prepared to explain
- ✗ Ask parent if contact information on first sheet of IEP is still correct

UNIQUE NEEDS

- ✗ Identify areas of need that interfere with the student's education
- ✗ If the student does not have a need in a particular area, provide an explanation of why the student's skills are adequate. (e.g., based on teacher observation, assessment data, etc.)



Areas of need could include:

- Pre-academic/Academic/Functional Performance
- Communication Development
 - AT/AAC
- Gross/Fine Motor Development
- Social Emotional/Behavioral
 - Peer relationships
 - Sensory Needs
- Pre-Vocational/Vocational
- Adaptive Behavior/Daily Living Skills
- Health

PRESENT LEVELS OF PERFORMANCE

(a) General. The IEP for each child with a disability must include-

- (1) A statement of the child's present levels of educational performance, including-

- (i) How the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or

- (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities

34 C.F.R. § 300.347

PRESENT LEVELS OF PERFORMANCE

- ✗ Include description of student's current performance (baseline)
- ✗ Include info re: strengths, interests, and weaknesses.
- ✗ Must be written in enough detail that parents are informed and have input into the decision-making process.
- ✗ Shouldn't be solely a list of test scores/results
- 📌 Don't forget to complete student strengths/ preferences/ interests and parent concerns sections

GOALS



Develop goals for each area of unique need that impacts involvement in general curriculum and requires more than modifications/ accommodations

“A public agency is not required to include in an IEP annual goals that relate to areas of the general curriculum in which the child's disability does not affect the child's ability to be involved in and progress in the general curriculum. If a child needs only modifications or accommodations in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area; however the IEP would need to specify those modifications or accommodations.”

Appendix A, Response to Question 4, 64 Federal Register, page 12472 (March 12, 1999)

GOALS



Must be measurable (SMART)

- *Baseline should link to the goal and explain current performance in terms that can be measured (where is student starting from). For example, not just a test score.*
- *What grade level? How many problems/trials? In a structured or unstructured setting? Independently or with assistance/prompts?*



How measured (i.e. observations, work samples, etc.)



Achievable within one year (annual)



Must be based on grade level state standards



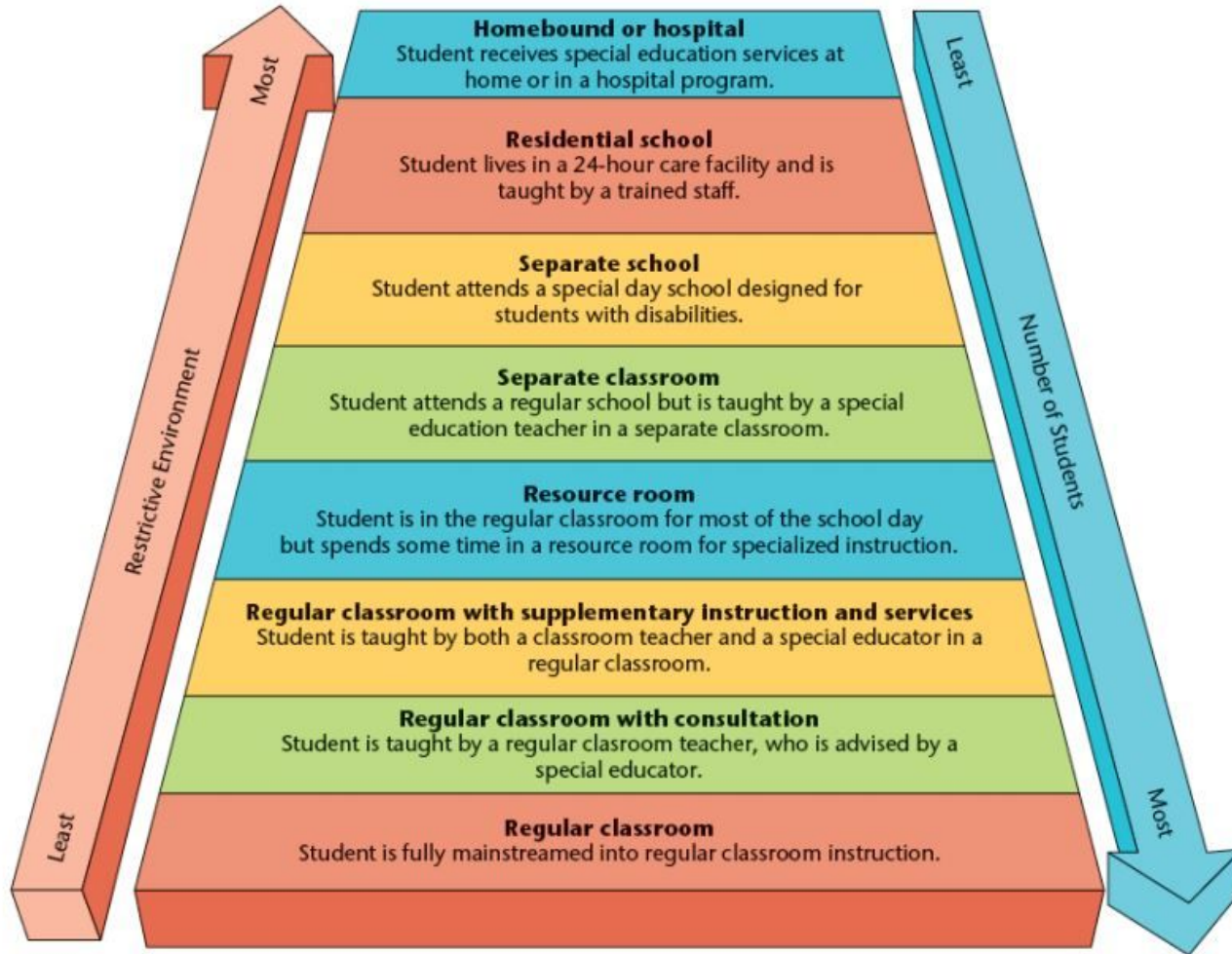
Objectives only required if student is taking alternative assessment



IEP MUST ALSO INCLUDE

- ✗ Progress on prior goals (annual progress) - include in IEP document!
- ✗ If taking alternate assessment, statement of why
- ✗ Individual transition plan, in place by the time student turns 16
- ✗ Consideration of special factors

PLACEMENT AND RELATED SERVICES



PLACEMENT AND RELATED SERVICES

Rachel H. Factors - LRE

- ✗ Educational benefits available to disabled student in the general education class, supplemented with appropriate aids and services.
- ✗ Non-academic (social) benefits of interaction with non-disabled students.
- ✗ Effect of presence of disabled student on teacher and other students.
- ✗ Costs of supplementary aids and services required for placement in general education.

Sacramento City Unified School District Board of Education v. Rachel H., 14 F.3d 1398 (9th Cir. 1994); see also 34 CFR §§ 300.114 – 300.118

PLACEMENT AND RELATED SERVICES

- ✗ Placement must be adequately defined
- ✗ Single, specific program
 - Facilities, location: District school, nonpublic school, RTC, etc.
 - Personnel: Special ed teacher, SLP, OT, etc.
 - Type of program: SDC, RSP, etc.
 - ESY: Duration, and any related services
 - Transportation, if appropriate
- ✗ Include start/end date, frequency, duration, location, delivery type (group, individual, consultation)

Make sure notes do not contradict services page!

RELATED SERVICES

- ✗ Audiology services
- ✗ Adapted Physical Education
- ✗ Counseling and guidance services
- ✗ Instruction in home or hospital
- ✗ Interpreting services
- ✗ Medical services (diagnostic and evaluation purposes only)
- ✗ Occupational therapy
- ✗ Orientation and mobility services
- ✗ Parent counseling and training
- ✗ Physical therapy
- ✗ Psychological services
- ✗ Recreation/therapeutic recreation
- ✗ Rehabilitation counseling services
- ✗ School health/nursing services
- ✗ Social work services
- ✗ Specialized driver training instruction
- ✗ Specialized services for low incidence disabilities, such as readers, transcribers, and vision and hearing services;
- ✗ Specially designed vocational education and career development
- ✗ Speech-language pathology services
- ✗ Transportation
- ✗ Vision services

Cal Ed. Code § 56363; 20 U.S.C. § 1401(26), 34 C.F.R. § 300.34.

PLACEMENT AND RELATED SERVICES

- ✗ The IEP must indicate the amount of time the student spends in general education.
- ✗ If student is not 100% in general education, the IEP must indicate why.

ESY STANDARD

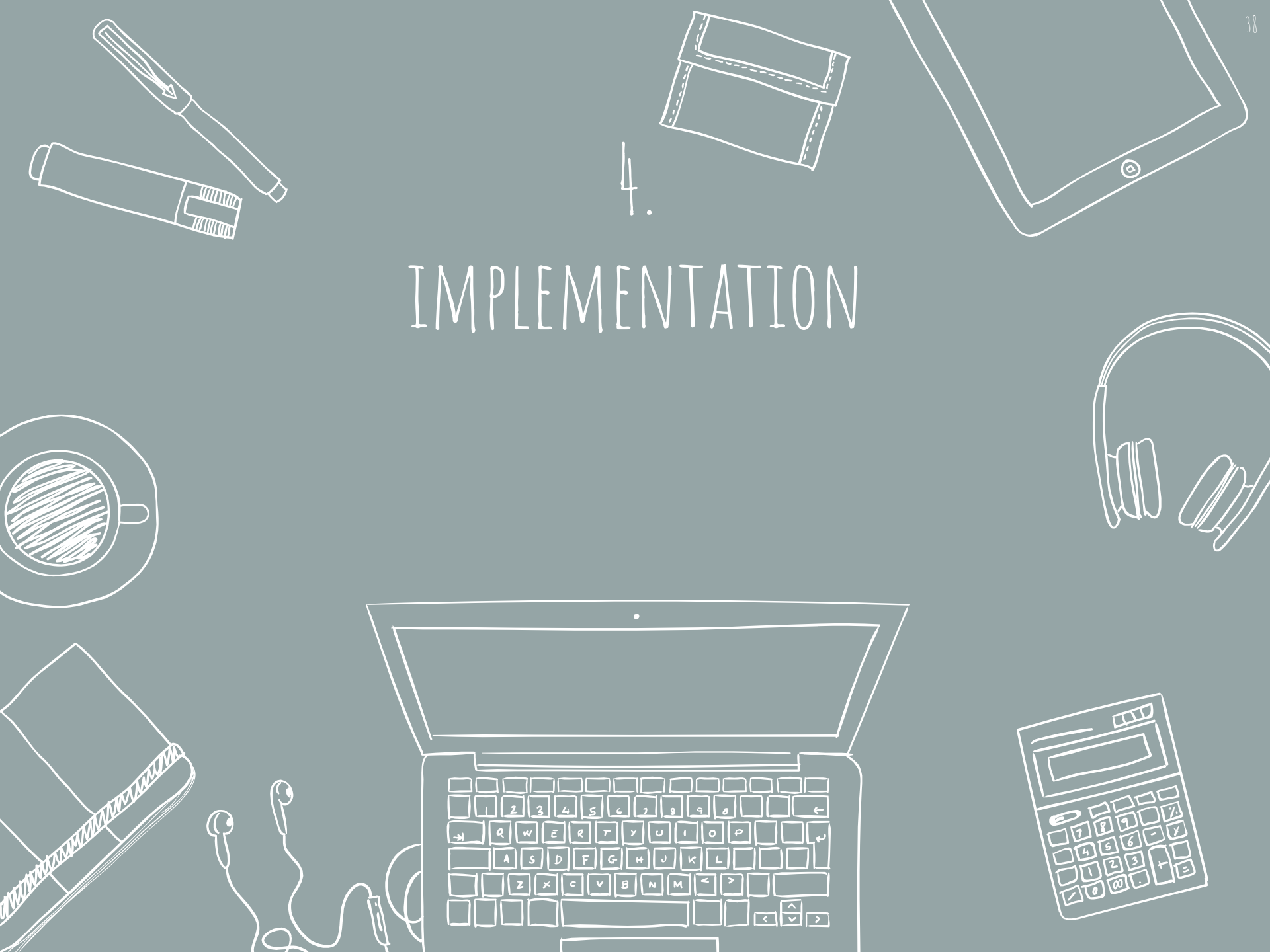
✘ ESY must be provided for student:

“who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause **regression**, when coupled with **limited recoupment capacity**, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition.”

5 C.C.R. § 3043; 34 C.F.R. § 300.106

4.

IMPLEMENTATION



IMPLEMENTATION



After each IEP meeting, the District must ensure that all teachers and others providing special education and related services to the child — whether employed by the District or not:

- Have access to the IEP and knowledge of its contents;
- Have information regarding his/her specific responsibilities related to implementing the IEP, including specific goals, services, or accommodations/modifications that are to be provided to the student; and
- Implement the IEP as soon as possible.

(California Education Code §§ 56043(i) & 56347)

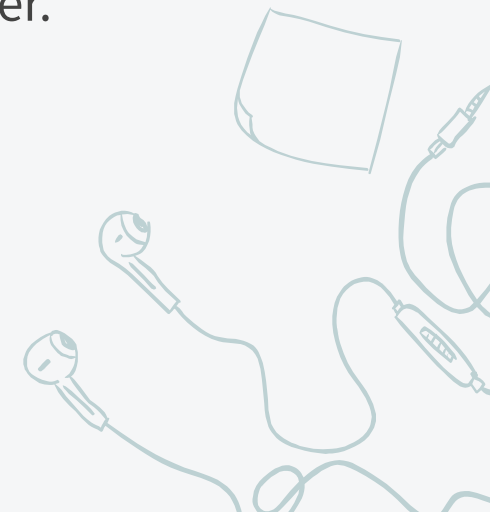
IMPLEMENTATION

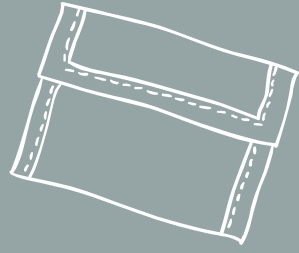
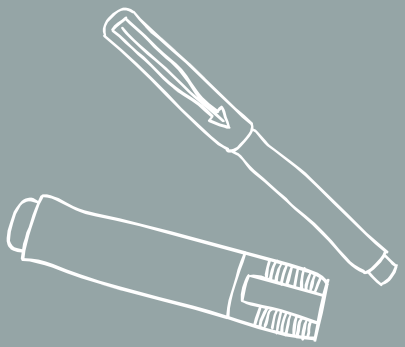
- ✗ Make sure all educators have a copy of the IEP
- ✗ Behavior plans are a part of the student's IEP, and must be included
- ✗ Same with health plans, emergency plans, seizure plans, etc.
- ✗ Copies can include summaries (e.g., IEPs at a Glance), but should not be only summaries
- ✗ Consultation between teachers/aides/staff/service providers/administration as needed



IMPLEMENTATION

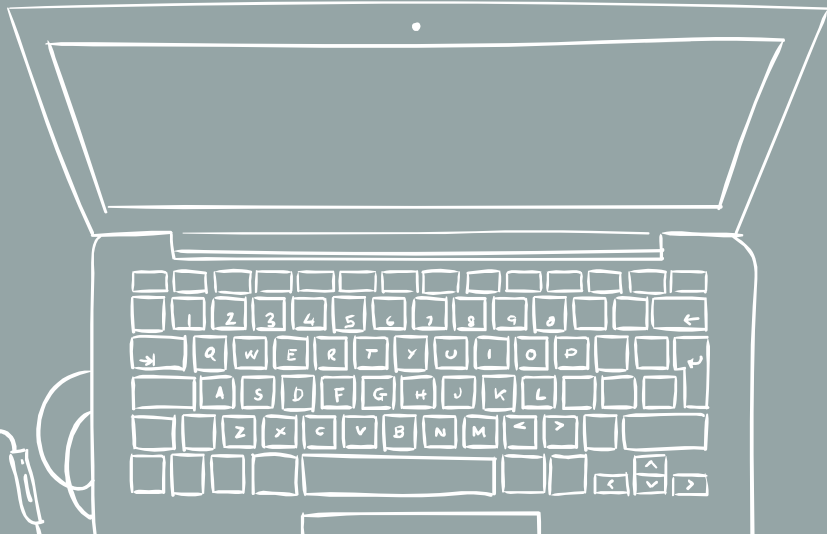
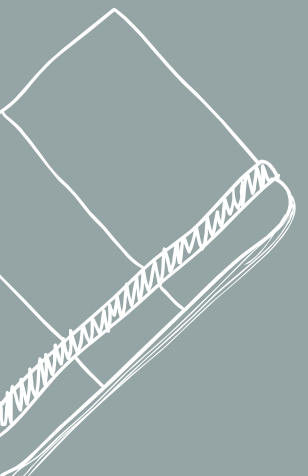
- ✗ At the beginning of each school year, teachers should be aware of which students have IEPs and know what must be provided.
- ✗ Ask the student’s previous teachers/educators for tips or any “need to know” information.
- ✗ Remember an IEP is confidential, try not to single out students with IEPs in the classroom.
- ✗ If there is a new behavior or new area of need that is not identified in the IEP, an IEP meeting should be convened.
- ✗ Inform/communicate with the student’s case manager.










5.

WHAT TO DO WHEN... Q & A



WHAT TO DO WHEN...

- 
- Faced with parent requests at IEP team meeting, such as
 - Additional assessment
 - IEE
 - NPS/Private School Placement
 - Specific methodology (ABA, Lindamood Bell, Orton Gillingham)
- 
- Parent fails to show up
- 
- Parent shows up with legal counsel (not announced)
- 
- Parent disagrees with... goals, services, placement, etc.
- 
- Parent wants a change to your assessment report



THANKS!
Any questions?



Brianna Hill
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Special thanks to all the people who made and released these awesome resources for free: Presentation template by [SlidesCarnival](#)

