

Failure-to-Implement Case Exercise – Feb. 2017 Webinar

First, review this case scenario and answer the questions on the next page simply for your first impressions without the benefit of the material in the accompanying outline. Second, during the last segment of the webinar, please re-visit the facts of the case scenario and revise your answers in light of the content in the webinar, which highlights the main points of the more detailed reference material of the outline.

Case Scenario:

J.P. was a sixth grader with a language-based specific learning disability and a history of developmental problems. The IEP that the CSE developed, with active parental participation, for grade 7 continued his participation at the same middle school. However, the IEP reduced the number of inclusionary academic classes from three to two, replacing the third with a small-group class for specialized instruction in reading. The IEP continued the provision for assistance of a consulting special education teacher for the two regular academic classes. It also continued the provisions for one hour per week of occupational therapy (OT) and speech/language therapy (SLT). Finally, it included an assistive technology (AT) provision of the Neo2 AlphaSmart device¹ “as needed.”

The parents filed a complaint for an impartial hearing, sufficiently identifying claims of denial of FAPE in three areas: (1) procedural, (2) substantive, and (3) implementation. The third area more specifically was a “failure-to-implement” (FTI) claim.

The hearing proceeded to fit within the customary course to closure, whether via closing arguments or posthearing briefs. Time is now running quickly for issuance of the written decision.

Assume that in drafting the decision, you, as the impartial hearing officer (IHO), concluded without much difficulty that the alleged procedural violations did not result in harm to JP or his parent and that the IEP met the relatively relaxed *Rowley-Walczak* substantive standard for FAPE. To complete the decision, you need to provide a careful and through resolution of the FTI claim.

For the parents’ FTI claim, you have found the evidence preponderant in favor of three of five asserted deviations from complete implementation of the IEP during grade 7. First, the consulting teacher was not certified to teach grade 7. Second, the related service providers, as a matter of consistent practice, implemented their OT and SLT for 50 minutes per week, using the remaining 10 minutes for each hourly period for preparation and “transition” (i.e., traveling within and among schools). Third, J.P.’s classroom did not have the Neo2 device, which was available instead at the school media center. However, his consulting teacher credibly testified that he opted to use the classroom computers; when the teachers asked whether he wanted the Neo2 retrieved from the media center, he declined it, presumably to avoid being seen as different from his general education peers.

¹ This device is a portable word processing device, with a large keyboard. Although popular for a limited period, including the time of this case, the company discontinued its sale in 2013.

Questions for Your Initial and Revised Responses:

- 1) *What would be your ruling with regard to the parent's FTI claim (without reaching the remedy)?*

- 2) *Would your answer be different if, instead, the proven deviation were limited to each of the following alone:*
 - a) *the consulting teacher?*

 - b) *the OT service provider?*

 - c) *the Neo2 AT device?*