

# NYSED IDEA IHO Training

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# Predetermination

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Predetermination occurs when school district personnel decide a student's placement prior to the IEP team meeting without the parent's participation or input.

It's a procedural violation that may rise to a denial of FAPE.

# When is it a denial of FAPE?

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Upon a finding that the district significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the student.

# Likely predetermination claims

## Draft IEPs

- Draft IEPs are o.k., provided the draft IEP is used solely for purposes of discussion
- Must be made clear to parents that services listed are recommendations for review and can change

## Pre-meeting discussions

- Permissible for district to meet prior to meeting without the parents present to discuss potential placements
- District personnel, however, must come to meeting with an open mind

# Practice Tips:

- Is there evidence of the district members of the IEP team willingness to listen?
- Did the parents have an opportunity to voice their opinions, concerns, or preferences?
- Did the district members of the IEP team discuss the parents' opinions, concerns, or preferences?
- Was the parents' participation more than a mere form, which is to say, meaningful?
- Was the IEP directly informed and appropriately modified by the input of the parents or their providers?
- Did the IEP team consider alternatives to the initial recommendation included in the draft IEP?

# Emails

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Both FERPA and IDEA grant parents the right to inspect their child's education records.

An email may qualify as an education record.

# What is an education record?

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FERPA defines an education record as “records, files, documents, and other materials which ... contain information directly related to a student ... and ... are maintained by an educational agency or institution or by a person acting for such agency or institution.

Information specific to student + maintained by district = education record

# What does “maintain” mean?

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A record is maintained when it is kept in one place with a single, central custodian.



# Applicable Standard

- A failure to allow inspection and review of education records requires IHO to determine whether the information sought has student specific information and is maintained by the district

# Applicable Standard

## Inspection and review

- A failure to allow inspection and review of education records claim requires the IHO to determine whether the information sought has student specific information and is maintained by the district

## Access to potential evidence

- Focus shifts to determining whether the requested materials are legally relevant
- Either party may introduce any evidence that is relevant. Said hearing right is not limited to education records

# Observations

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Under the IDEA, it is expected that parents play a role in the evaluation and education placement of their child and assist in developing, reviewing, and revising the child's IEP.

No entitlement, however, for parents to observe their child in his/her current classroom or to observe a proposed educational placement.

Limited exceptions, e.g., parents invoke their right to an IEE

Reasonable limitations are o.k. to minimize disruptions / preserve confidentiality

# Observations

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The general inquiry is whether the parents are seeking to gain information from the observation in order to exercise a right under the IDEA.

# Questions to ask yourself

- What is the purpose of the observation?
- Whether the request is reasonable given the purpose and the length and frequency of the requested observation
- What is the activity that the student or classroom will be engaged in during the requested observation?
- What is the age and characteristics of the student (and peers) being observed?
- How might the student (or peers) react to the observer?
- What concerns has the district raised regarding the requested observation?

# Questions to ask yourself

- Should any conditions be imposed in order to address the district's concerns or to otherwise avoid or minimize disruptions to the classroom or to preserve the confidentiality of the other students?

# Limitation on Hearing Duration

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Limiting the number and/or length of hearing sessions is within the discretion of the IHO.

Support can be found –

- New York Regulation 8 NYCRR § 200.5(j)(3)(xiii)
- OSEP Policy Letters
- Court Decisions – *see* footnote 17