



## **Administrative Interference and Constructive Denial of FAPE: When Families Are Forced to Pay to Protect Their Child's Right to Read**

### **Overview: When Administration Overrides the IEP Team**

When school district administrators repeatedly direct IEP teams to remove or alter provisions that ensure access to effective instruction, such conduct undermines the integrity of the IEP process and may violate federal law. Even when parents succeed in preserving their child's program only through private advocacy or expense, a pattern of administrative interference may amount to a constructive denial of FAPE (Free Appropriate Public Education).

### **Legal Foundations: IDEA, Section 504, and the ADA**

The Individuals with Disabilities Education Act (IDEA) guarantees every eligible student a FAPE tailored to their unique needs. Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA) further prohibit discrimination based on disability. When administrators knowingly disregard a student's established instructional needs or direct staff to remove proven methodologies, they may act with deliberate indifference under Section 504 and the ADA.

Under IDEA, procedural and substantive violations occur when: (1) parents are excluded from meaningful participation, (2) decisions are predetermined, or (3) the IEP fails to include the instruction necessary for educational benefit. Remedies include compensatory education, reimbursement, and attorney's fees.

### **Case Law Examples**

- *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) – Predetermination and refusal to consider ABA methodology violated IDEA.
- *R.E.B. v. Hawaii Dept. of Educ.* (9th Cir. 2012) – When a methodology is essential to access FAPE, it must be specified in the IEP.

- O.R. v. Clark County Sch. Dist. (D. Nev. 2022) – District refusal to implement Orton-Gillingham instruction required reimbursement for private services.
- Duvall v. County of Kitsap (9th Cir. 2001) – Established deliberate indifference standard for ADA/504 damages.

## **Constructive Denial of FAPE Explained**

A constructive denial occurs when parents must continually defend necessary services against district-level interference, forcing them to bear financial or emotional burdens simply to maintain appropriate instruction. Even if the child ultimately receives the program, repeated administrative obstruction can constitute a violation of both IDEA and Section 504.

## **Remedies and Damages**

Depending on the statute invoked, families may seek:

- Reimbursement for private tutoring, evaluations, or expert support.
- Compensatory education or extended services.
- Attorney's fees and costs.
- Monetary damages for deliberate indifference under Section 504 or the ADA.
- Injunctive relief requiring staff training or policy changes.

## **Key Takeaways for Families**

- District administrators cannot lawfully override IEP team decisions based on administrative convenience or lack of training.
- Proven, evidence-based methodologies must remain when essential to the child's progress.
- Persistent interference, even if resisted, may show deliberate indifference.
- Document every directive, email, and meeting note showing administrative override.
- Parents may recover damages if the district's conduct caused financial or emotional harm.

## **Call to Action**

Families shouldn't have to fight alone to protect a child's right to read. Visit [WyoRightToRead.org](http://WyoRightToRead.org) to learn more about your rights, access resources, and join our effort to ensure every Wyoming child receives evidence-based literacy instruction.

Reading is a Right, Not a Privilege.