



## **Performance reviews in special ed aren't as confidential as you think**

In *J.H. v. Palo Alto Unified School District*, [126 LRP 5922](#) (N.D. Cal. 03/10/26), the mother of a student with a disability, claiming two teachers contributed to a denial of FAPE, can obtain their performance reviews through discovery.

"Generally speaking, the information included within the [teacher performance] evaluation focuses on curriculum and planning, the learning environment, teaching strategies, and professionalism," said Kim Croyle, attorney at Bowles Rice LLP in Morgantown, W.Va. "The evaluation reflects the teacher's performance over a given period of time and also reflects the teacher's development, given their level of experience."

Districts must prepare for teacher performance evaluations to be discoverable at any moment. Read this breakdown of how a district should respond when such evaluations are requested during special education litigation.

### **Understand discovery process**

"The IDEA guarantees parents the right to a [due process](#) hearing to challenge any number of matters, including the identification, evaluation, or educational placement of a child with a disability, as well as the provision of FAPE to the child," said Croyle. [34 CFR 300.507](#) (a)(1).

She said each party has the right to present evidence, confront and cross-examine, and compel the attendance of witnesses at the due process hearing. [34 CFR 300.512](#) (a)(2).

"The [formal rules of evidence](#) generally do not apply as they would in court, but that does not mean everything requested is discoverable," said Croyle. "Hearing officers still police relevance, confidentiality, and procedural fairness."

### **Know when performance evaluation is discoverable**

"Teacher performance evaluations may be discoverable or relevant if they are tied to [IEP implementation](#), [specially designed instruction](#), accommodations, behavior plans, data collection, and FAPE," said Croyle. "It's not discoverable when they are being used to show the teacher is a 'bad' teacher."

For example, a hearing officer might find a teacher performance evaluation relevant to a due process hearing if it faults a teacher for failing to implement behavior management plans, to differentiate instruction, or to collect required data, she said.

"The relevant distinction is not whether the teacher was subjectively 'good' or 'bad,' but whether the district used personnel who satisfied applicable IDEA and state qualification requirements," said Croyle. "And more importantly, in a due process hearing, whether any personnel issue resulted in a denial of FAPE."

She said it must tie back to the issue that is being decided in the due process hearing.

### **Don't be so quick to hand over performance evaluations**

Just because a teacher's performance evaluation was requested, it doesn't mean a district should automatically hand it over, Croyle said. Employee records are usually governed by state public records laws, personnel record statutes, collective bargaining agreements, or local policies, she added.

"While parents have FERPA and IDEA access rights to inspect and review education records relating to the child's identification, evaluation, placement, or FAPE, FERPA's statutory [definition of 'education records'](#) expressly excludes records made and maintained in the normal course of business that relate exclusively to an individual in that person's capacity as an employee," said Croyle.

When a district faces a request or a [subpoena](#) seeking a performance evaluation, ask the hearing officer to have the parent articulate its relevance to the issues, she said. Then, offer alternatives that don't infringe on the teacher's privacy, including licensure and training records, IEP implementation data, observation notes, [service logs](#), redacted evaluation excerpts, and in-camera review under a protective order, said Croyle. Also, notify the teacher that their records are being sought in the due process hearing so that he can seek a protective order, if necessary, she added.

### **Reduce risks with discovery going forward**

"Above all else, a district should be mindful that the evaluation process is to improve overall educational outcomes, not provide comments on a particular student," said Croyle.

She said to center evaluations on high standards of performance for teachers to guarantee high-quality instruction and boost student achievement.

*See also:*

↪ [EXPERT INSIGHT: Discovery rule and IDEA's statute of limitations: Practical strategies following Andrew F.](#)

↪ [SmartStart: Due Process -- Five-Day Rule for Admission of Evidence](#)

↪ [IDEA Due Process Survival Guide: A Step-by-Step Companion for Administrators and Attorneys](#), by Fagen Friedman & Fulfrost, LLP, Howard J. Fulfrost, Esq., Jan E. Tomsky, Esq.

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