Legal Memorandum in support of Recording Policy KKB

To: Helen Wade, President of the Columbia Public School Board, members of the board

cc: Dr. Peter Stiepleman, Superintendent
Alysee Monsees, Director of Special Education Services
Liana Vessell, Assistant Director of Special Education Services
Shea Collier, Process Coordinator for 504 Plans

From: Amy Salladay, Chairwoman, Advocacy Committee of Columbia Missouri Special Education Parent Teacher Association (COMO Septa)

Re: Recording Policy KKB

This information is being provided to better inform the Columbia Public School Board and administration regarding the legal issues associated with recording policy KKB. One of COMO Septa's goals is to work with school administration and teachers to develop and implement policies that benefit parents, teachers, and students. Parents of COMO Septa ("Columbia Missouri Special Education Parent Teacher Association") seek the right to record all IEP and 504 plan meetings. Missouri Disability Empowerment (MoDE) supports this objective and is working with legislators to bring about a state-wide change with respect to recording these meetings.

Parents are not seeking to place any additional burden on the school or on teachers; they are merely seeking the right to record special education meetings themselves. Parents are not seeking a policy change that would allow recording of anything other than special education meetings.

The legal issue is the right of a parent to record an individualized education program (IEP) or 504 plan meeting and whether any prohibition on recording these meetings is a denial of a child's legal right to a free and appropriate education in our public-school system.

The federal laws governing this issue are the Individuals with Disabilities Education Act (hereinafter referred to as "IDEA") codified at 20 U.S.C. Section 1400 and Section 504 of the Rehabilitation Act of 1973 (hereinafter referred to as "Section 504") codified at 29 U.S.C. Section 701.

Important History

As recently as the 1970s, it was legal to prevent students with disabilities from attending public school. Prior to the adoption of the Education for all Handicapped Children Act of 1975 there was wholesale exclusion and legal denial of an education at all to children with disabilities. *Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017).*

The Education for all Handicapped Children Act of 1975 was the first federal law implemented to provide a legal right to children with disabilities to be educated in our public-school system. *Honig v. Doe, 484 U.S. 305, 310, 108 S. Ct. 592, 597, 98 L.Ed.2d. 686 (1988).*

The Individuals with Disabilities Education Act (IDEA) was reauthorized in 2004 and it mandates that, in return for its acceptance of federal funding, a state must provide all handicapped children a "free appropriate public education" in the least restrictive environment. *20 U.S.C. 1412(1)(5).*

The purpose of the IDEA is to ensure that children, through education provided in our public-school system have opportunities to live independently, pursue further education, and be employed. *U.S.C. Section 1400(d).*

The purpose of the IDEA are the same goals that every parent has for a child with disabilities. We want our children to be able to live independently, have the opportunity to pursue further education, and be employed.

The IDEA is an ambitious piece of legislation enacted in response to Congress' perception that many handicapped children in the United States were either totally excluded from schools or were sitting idly in regular classrooms awaiting the time when they were old enough to drop out. *Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017).*

Congress was aware that "schools had all too often denied such children appropriate educations without in any way consulting their parents and repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness." *Honig v. Doe, 484 U.S. 305, 311, 108 S. Ct. 592,98 L.Ed.2d 686 (1988).*

Missouri receives federal special education funds through the IDEA and in exchange for federal funds, must pledge to comply with several statutory conditions. Among them, the state must provide a fee appropriate public education—a FAPE, for short---to all eligible children with disabilities. *U.S.C. Section 1412(A)(1).*

What is required?

The Individuals with Disabilities Education Act (IDEA) requires school districts to develop an individualized education program (IEP) for each child with a disability, 20 U.S.C.S. §§ 1412(a)(4), 1414(d), with parents playing a significant role in this process. Parents serve as members of the team that develops the IEP. 20 U.S.C.S. § 1414(d)(1)(B). The concerns parents have for enhancing the education of their child must be considered by the team. 20 U.S.C.S. § 1414(d)(3)(A)(ii). The IDEA accords parents additional protections that apply throughout the IEP process. 20 U.S.C.S. § 1414(d)(4)(A) requires the IEP team to revise the IEP when appropriate to address certain information provided by the parents. 20 U.S.C.S. § 1414(e) requires states to ensure that the parents of a child with a disability are members of any group that makes decisions on the educational placement of their child. A free and appropriate education, a FAPE, as IDEA defines it, includes both special education and related services. *U.S.C. Section 1401(9) (A-D).*

"Special education" is "specially designed instruction…to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child…to benefit from" that instruction *U.S.C. Section 1401(26).*

FAPE is the foundation of special education and is individually developed for each student with a disability via an individualized education plan (IEP), developed by the school's parents and school working together. The IEP written document controls. No parent is taking the position that any recording would supersede what is contained in the written IEP or 504 plan document.

The Individuals with Disabilities Education Act, through its text and structure, creates in parents an independent stake not only in the procedures and costs implicated by this process but also in the substantive decisions to be made. The Act does not differentiate, through isolated references to various procedures and remedies, between the rights accorded to children and the rights accorded to parents. As a consequence, a parent may be a "party aggrieved" for purposes of 20 U.S.C.S. § 1415(i)(2) with regard to "any matter" implicating these rights. 20 U.S.C.S. § 1415(b)(6)(A). The status of parents as parties is not limited to matters that relate to procedure and cost recovery. To find otherwise would be inconsistent with the collaborative framework and expansive system of review established by the Act. *Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 127 S. Ct. 1994 (2007).*

The IDEA's intent is that parents be equal partners in the development of appropriate educational plans for their children. Parental involvement in terms of implementing special education services is paramount because every child with special needs and their family is uniquely different.

The IEP conference is the major decision-making vehicle in the special education process. The child's parents are members of the IEP team and must be invited to participate. Parents play a key role, along with school in developing, reviewing and revising, if necessary, a child's IEP, and in determining the nature and extent of the child's needs. Through the IEP process, a parent can discuss with school officials' different approaches that would appropriately meet their child's unique needs. *Honig v. Doe, 484 U.S. 305, 310, 108 S. Ct. 592, 597, 98 L.Ed.2d. 686 (1988). Policy letter, April 16, 2001 to US Congresswoman Jo Ann Emerson,* 34 *C.F.R. 300.501, 34 C.F.R.300.321.*

Accordingly, parents are critical members of the IEP Team. 20 U.S.C. § 1414(d)(1)(b); 34 C.F.R. § 300.321(a)(1) and § 300.322(a)-(f). Therefore, school districts are responsible for initiating IEP meetings and ensuring that parents are given a meaningful opportunity to attend the IEP meeting and participate as full members of the IEP Team. 34 C.F.R. § 300.322. To ensure parents are afforded the opportunity to participate in their child's IEP Team meeting, school districts are required to notify the parents with enough advance notice of the IEP meeting so that one or more parents can attend, 34 C.F.R. § 300.322(a) to schedule the meeting at a mutually agreeable time and place to ensure parental attendance, 34 C.F.R. § 300.322(a)(1-2), provide advance notice to the parents of who will attend the IEP meeting as well as the purpose/(s) for the meeting, 34 C.F.R. § 300.322(b)(1), ensure other methods of attendance, such as conference calling, if the parent cannot physically attend the IEP meeting, 34 C.F.R. § 300.322(c), provide for interpreters at the IEP meeting for parents who are deaf or hard of hearing or whose primary language is not English, 34 C.F.R. § 300.322(e), and if the school "cannot convince the parents they should attend," the school must document its attempts to contact the parents and invite them to the meeting, including phone calls and visits to the parents' home and places of employment to

attempt to arrange a mutually agreeable meeting time, 34 C.F.R. § 300.322(d). In addition, after participating in the development of their child's IEP at the meeting, parents must also be involved in their child's placement decision.

Indeed, the only instances wherein a school might proceed with an IEP meeting *without* the parents have specifically been outlined, 20 U.S.C. § 1414(e); *see also* 34 C.F.R. § 300.501(c)(1-3), and placement decisions for a student can only be made without the "involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision." 34 C.F.R. § 300.501(c)(4).

Moreover, parental involvement in the IEP process far exceeds mere physical attendance at meetings, as evidenced by the 1997 amendments to IDEA which strengthened parental rights and specifically mandated that parents are equal members of an IEP Team. 20 U.S.C. § 1414(d)(1)(B); *Notice of Interpretation,* Appendix A to 34 CFR Part 300, Question 5 (1999 regulations);[1] 20 U.S.C. § 1414(d)(1)(b); *see also, e.g., Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004) ("[Parental] [p]articipation must be more than a mere form; it must be meaningful."). As active and equal participants on the team, parents are in the unique position to offer valuable information on their children's strengths, to describe the need for services, and to share specific concerns with the entire IEP team. *See* 34 CFR Part 300, App. A, Quest. 5; *see also Doug C. v. Haw. Dep't of Educ.*, 720 F.3d 1038, 1044 (9th Cir. 2013) ("Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know."). Further, collaborative and appropriate decisions regarding placement and services only occur when parental input equips the IEP team with the best available information specific to the individual child.

Additionally, on December 7, 2017, the U.S. Department of Education released a helpful resource for parents, advocates and attorneys alike in its Questions and Answers (Q&A) on *Endrew F. v. Douglas County School District RE-1, available at* https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-endrewcase-12-07-2017. pdf (last viewed May 16, 2019). As the Q&A acknowledged, the Court's clarification of a school's substantive obligation under IDEA, "reinforced the requirement that 'every child should have the chance to meet challenging objectives.'" (Q&A No. 3). Moreover, the procedural requirements are important, and the guidance also makes clear that parental involvement in these decisions is essential. *See* (Q&A Nos. 10-12, 15). "Determining an appropriate and challenging level of progress is an individualized determination that is unique to each child. When making this determination, each child's IEP Team must consider the child's present levels of performance and other factors such as the child's previous rate of progress and any information provided by the child's parents." (Q&A Nos. 12).

Moreover, "[u]nder the IDEA, parental participation doesn't end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive." *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017);

see also Bd. of Educ. of Yorktown Cent. Sch. Dist. v. C.S., 357 F. Supp. 3d 311, 322–23 (S.D.N.Y. 2019) ("Allowing the District to unilaterally amend the IEP without sending the Parents a copy of the IEP would "undermine [the IEP's] function of giving notice of the services the school district has agreed to provide and measuring the student's progress toward the goals outlined in the IEP" and "vitiate[ ] the parents' right to participate at every step of the IEP drafting process.")(citing *M.C.*, 858 F.3d at 1197).

There are no other meetings between parents and school where the law explicitly states that the school has an affirmative duty to do everything possible to ensure parent participation in a meeting with the school. Indeed, "one of the central innovations of the special education law, and a key to its success, is that it empowers parents to participate in designing programs for their children and to challenge school district decisions about educational services and placement." Mark C. Weber, *Litigation under the Individuals with Disabilities Education Act after Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 65 Ohio St. L.J. 357, 369 (2004).*

The school's position that it will allow recording when it is necessary for parents to meaningfully participate in the meeting fails to address the rights of parents to fully understand the IEP proceedings by recording the meeting for themselves to allow for effective participation in subsequent assessments of the IEP formulated. *Gardner v. Caddo Parish School Board, U.S. W.D. LA (September 6, 1991).*

Once developed, the IEP document is reviewed annually by the parents and the IEP team to assess current functioning and goals. The length of these meetings can vary greatly based on the child's age, whether the child is progressing towards meeting his or her goals, and whether the child is transitioning to middle or high school. *34 C.F.R. 300.323*

Parents need the ability to go back and listen to what was discussed previously so that they can adequately prepare their children for the future. The IEP is an ever-evolving document that changes with a child's needs, behavior, and academic levels. When these meetings often take place annually, it is important for parents to be able to go back and listen and recall what was discussed the previous year so that they can help formulate goals and progress from year to year.

To meet its substantive obligation under the IDEA, a school must offer an IEP 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).*

Nationally, of the children who receive an IEP in kindergarten, 50% of those children will work out of the need for special education services by the 5th grade. *U.S. Department of Education, National Center for Statistics.* Many of these children will then move to a 504 plan under Section 504 of the Rehabilitation Act. Oftentimes, other children, who may not qualify for an IEP do qualify for a 504 plan.

Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act guarantees certain rights to people with disabilities. Section 504 was one of the first federal civil rights laws offering protection to people with disabilities.

Section 504 is broader than the IDEA. Some children who do not meet the IDEA definition of disability are served under Section 504 because the definition of disability is different.

Section 504 requires schools to provide free appropriate public education (FAPE) to children with disabilities, who may benefit from public education. The school must identify the child's educational needs and provide any regular or special education to satisfy the child's educational needs just as well as it does for the child without disabilities. This is accomplished by developing an educational plan for the child. This educational plan is referred to as a 504 plan. The 504 plan covers accommodations, services and support the child will be receiving in order to have access to education at school. A 504 plan is different and less detailed than an IEP under the IDEA.

A 504 plan is a plan designed to provide accommodations to children with qualifying disabilities in the regular education classroom. Typical accommodations include things like preferential seating, extended time to complete or makeup homework, an extra set of books at home, assistance with using bathroom facilities, a physical education waiver, extra test time, having homework printed in a larger font, and the right to record classroom lectures in lieu of notetaking. A 504 plan generally does not include the provision of special education services by a learning specialist or case manager.

So, while students who qualify for a 504 plan may have the right to record their classroom lectures; neither they nor their parents, under the current Columbia School Board policy have the right to record the actual meeting where the decision to record classroom lectures as an accommodation is made.

A 504 plan does not provide special education or related services but is critical to a disabled child's success because even though that child may no longer need special education services, they still need accommodations in the regular education classroom to succeed. Parents are also actively encouraged to participate in 504 meetings to help develop, make recommendations and implement the accommodations necessary for their child to be successful.

Like IEPs, 504 plans are also very child specific in nature. There is no one size fits all for either an IEP or a 504 plan. The length of these meetings, the written goals, and accommodations provided tend to vary greatly based on each child's individual disability and their needs at the time the plan is developed. Like IEPs, 504 plans often do change over time as the child's needs change and the child gets older and moves from building to building.

Procedural violations of the IDEA are a denial of FAPE

Under the mandates of the IDEA, the school district must fully inform parents of their rights under both federal and state law. At the present time this is done only through a written booklet provided to parents by school staff at the beginning of the IEP process.

The IDEA contains many procedural safeguards designed to ensure that parents can meaningfully participate in their child's special education. Again, this is what distinguishes the rights that parents and disabled children have from those students in the regular education classroom.

Procedural safeguards routinely violated by Columbia Public Schools include but are not limited to: failure to include parents in IEP meetings at all, refusing to reschedule meetings when parents can attend, short notice of scheduled meetings, refusing to allow parents to review evaluation/test results in advance of the meeting, refusing to provide copies of test results in advance of evaluation meetings or even after the evaluation meeting has taken place, refusing to allow parents to bring support people with them to the meeting, pre-deciding/qualification before the actual IEP meeting with teachers only meeting in advance, pre-deciding on placement issues before the meeting, refusing to allow parents to take drafts of the IEP home with them, and refusing to allow parents and students who have disabilities to record these meetings.

This administration does not currently provide accommodations to parents or students who have disabilities and need help understanding these meetings. Accommodations are not voluntarily offered before or at the beginning of each meeting and staff is not trained to understand that when a parent says they don't understand what is being discussed, that accommodations, including recording and notetaking should be offered.

Because disabilities tend to run in families, there are many parents in these meetings with the same disabilities as their children. Because the IDEA was only implemented in public schools in the past twenty years many parents making these decisions for their children did not have access to services when they were children.

The most common disability served under the IDEA is specific learning disability which encompasses parents and children who are dyslexic and have trouble reading written text. Neither the parents nor the children are being offered accommodations and this school does not have local policies in place to accommodate parents who can't read.

These procedural violations of the IDEA are important because the failure of the school to follow the procedural requirements laid out in the IDEA is a failure to provide a free and appropriate education to a child with disabilities. The fact that this school does not have local policies and procedures that encourage meaningful parent participation violates every disabled child's due process right to a free and appropriate public education.

COMO Septa (Columbia Special Education Parent Teacher Association) formed because of concern by a large group of parents (and the providers in the community who serve these disabled children) about whether their child should have qualified for special education services, how they are treated during the evaluation process by school, whether appropriate goals for special education are being written appropriately and/or implemented, whether the goals are sufficient to ensure that their child is actually progressing along a continuum that would demonstrate progress, and whether their child is being denied a free and appropriate public education.

It should be the goal of every school administrator, board member and teacher to ensure that our children have the opportunity to receive a free and appropriate public education. The board's refusal to adopt a pro-recording policy signifies not only blatant disregard for disabled children but outright discrimination towards those with disabilities.

These meetings are already legal proceedings and parents can sue

Under Missouri law, parents or school may file a child complaint or due process complaint before the Missouri Administrative Hearing Commission when there is a dispute regarding a child's IEP. A parent may also file a complaint with the Office of Civil Rights if they disagree with a decision made at a 504 meeting.

It is commonly misunderstood by teachers and board members that the special education meetings parents want to record are meetings where as a result of the decisions made at that meeting; either parents or school already have the right to sue. Again, this distinguishes the basis for the request to record from other types of meetings between school and parents.

If a party loses at the conclusion of the administrative hearing process, the losing party may continue to seek relief in state or federal court. *Section 162.061 RSMo (2000).*

The conflict with Missouri law

Columbia Public Schools has taken the position that "state law doesn't make it a right to record, it's just not illegal to record." *Per Dr. Stiepleman on June 10, 2019 at the Columbia Public School Board Meeting.*

This reference is to Missouri's one-party recording law that provides that only one party to a conversation needs to consent in order to record. *See Section 542.402 RSMo (2000).*

While it is not illegal to record the failure to adopt a pro-recording policy puts COMO Septa and all other parents in the position of having to continue secretly record these special education meetings with school. Having to secretly record is not meaningful participation nor does secretly recording allow a parent to be on equal footing as an IEP team member. However, it's not illegal to record under Missouri's one-party recording law.

The failure to adopt a pro-recording policy also leaves teachers without a recording when parents file a lawsuit over the decisions made in these meetings.

It is not good policy to encourage parents to secretly record when a pro-recording policy could facilitate better teacher training, consistency across buildings in terms of how special education services are implemented and delivered, and when it would promote better behavior on behalf of everyone during these meetings.

Columbia Public Schools administration continues to cite *Camdenton R-III School District (July 22, 2005)* in support of its position to not allow recording. The mother in that case chose to represent herself. She presented no evidence regarding how recording her child's special education meeting would have helped her meaningfully participate, understand, and develop an appropriate educational plan for her child. Recording was only one of six points raised in her complaint and the recording issue was not appropriately raised by her or discussed at length by the court.

More importantly, the *Camdenton* case was decided prior to *Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017)* which changed the standard for determining a child's

FAPE—right to free and appropriate education. To continue to rely on the *Camdenton* case in support of not recording is a failure to recognize the holding in *Endrew* which is now substantially broader with respect to FAPE. This school has an obligation to implement local policies in accordance with the *Endrew* decision which include allowing parents to record special education meetings so that they can meaningfully participate in their child's special education. A failure to do so is a violation of FAPE and every child's due process right to a fair and appropriate education in the public-school system.

There are no privacy concerns

E.H. v. Tirozzi addressed a teacher's privacy concerns about being recorded. The Court found that any official attending a special education meeting is acting in an official capacity. As such, the matters discussed are not, for them, personal. Moreover, while the school cannot disclose information regarding a student, the same is not true of similar information by a parent. *735 F. Supp. 53 (1990).*

Decisions and discussions during these meetings frequently do become the subject of review by both state and federal government, as well as, the subject of IDEA dur process hearings. *Jackson County School Board v. Parent, (FL. Sept. 12, 2012).*

In the case of a complaint regarding a 504 plan, the meeting would become evidence in a complaint with the Office of Civil Rights. When parents are already recording these meetings, then teachers should also want a recording to defend themselves in court with respect to any claim brought related to the decisions made in these special education meetings. There are also situations where teachers should want to pro-actively record these meetings with parents even when parents do not request to record in order to preserve a record, resolve disputes as between multiple teachers who commonly attend these meetings, and to promote better behavior by everyone in attendance at these meetings.

It is important to note that in *E.H. v. Tirozzi*, the court held that assuming that teachers do have a privacy concern, their interests are not outweighed by the legitimate and substantial interests of the IDEA in ensuring parents a right to meaningful participation and in enforcing the procedural safeguards to protect that right. That recording would make a teacher "uncomfortable" is an insufficient reason to prohibit a parent from recording, when balanced against the parent's right to record. Furthermore, teachers have a duty to attend these meetings. They cannot, therefore, avoid being recorded by avoiding the meetings altogether. *735 F. Supp. 53 (1990).*

The school argued in *E.H. v. Tirozzi*, that recording can cause mistrust and interfere with the goals of special education meetings. They expressed concern that the meetings would become more formalized, sapping the spontaneity and flexibility often necessary for successful negotiations.

The Court found that the parent's interest in ascertaining what was said at the special education meetings cannot be subordinated to the personal convictions of a teacher. The amount and quality of a parent's participation is extremely important to the success of special education meetings. The idea that recording would make a teacher "uncomfortable" is completely self-

serving and fails to consider the best interests of the very students that the IDEA is designed to protect. The Court would not subject the procedural safeguards of the IDEA to the personal whimsy and caprice of individual IEP team members. Congress did not intend that when it adopted the IDEA. *E. H. v. Tirozzi, 735 F. Supp. (1990).*

In *V.W. v. Favolise, 131 F.R.D. 654 (1990)* the court held that parents need not demonstrate some wellspring for their right to record meetings, particularly where, as here, they are given a statutory right to attend and participate in those meetings. Again, a parent's right to record a special education meeting is completely different than other meetings between school and parents because parents of disabled children have a statutory right and the school is required to afford those parents every opportunity to meaningfully participate in these types of meetings.

The school in *V.W. V. Favolise* argued that if these meetings were recorded then it would inhibit "open" dialogues and that school officials would meet privately to arrive at a consensus that would, implicitly, dictate the substance of the IEP. Parents would be "left out of the collaborative 'loop'", and the other IEP team members would have avoided the "danger" of voicing minority opinions 'on the record' which might be used against the school system in future litigation. *V.W. v. Favolise, 131 F.R.D. 654 (1990).*

The Court held that the school board's "draconian" action with respect to not allowing recording of these meetings compels the conclusion that the school was actively attempting to assert control over the IEP process in derogation of the parent's right of participation guaranteed by the IDEA. *V.W. v. Favolise, 131 F.R.D. 655 (1990).*

The Court in *V.W. v. Favolise* was also not convinced that recording these meetings would have the "chilling" consequences that the school threatened. Even if it would, and the "professional" members of the team resort to illegal "consensus building," it is manifest that parents would have an unquestioned right to seek judicial enforcement of their statutory right to participate in the formulation of their child's educational program. It is apparent that, in the context of the IDEA, participation means something more than mere presence; it means being afforded the opportunity to be an equal collaborator, whose views are entitled to as much consideration and weight as those of other members of the team, in the formulation and evaluation of their child's education.

Not allowing parents the right to record does not position them as equal partners at the table with respect to making decisions involving their child's special education. Not allowing recording of special education meetings is inconsistent with and violates both the policies and provisions of the IDEA. *V.W. v. Favolise, 131 F.R.D. 655 (1990).*

Conclusion

How we as a school district address the issue of education for disabled children defines us as a people. Do not stand on the sidelines allowing discrimination of disabled parents and children when you could have done something different. The failure to adopt local policies that not only allow but encourage meaningful parent participation is a denial of every disabled child's due process right to a free and appropriate education.