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Meaningful Parental Participation: Parents with Specialized Needs

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Presented by:
Jeni Hergenreder
Aimee Zundel

Who is a “Parent” Under IDEA?

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- (5) A surrogate parent who has been appointed in accordance with §300.5129 or section 639(a)(5) of the Act.

-34 C.F.R. 300.30.



Who is a “Parent” Under IDEA?

- When one or more individuals as described in the previous slide are qualified to act as a “parent,” then the IDEA regulations dictate that the biological or adoptive parent is presumed to be the “parent,” so long as the biological or adoptive parent is “attempting to act as the parent.”

-34 C.F.R. 300.30(b)(1).

Who is a “Parent” Under IDEA?

- Where a court order identifies a specific person or persons to act as the “parent” of the child or to make educational decisions on behalf of the child, then that individual is to be regarded as the “parent” for IDEA purposes.

-34 C.F.R. 300.30(b)(2).



Meaningful Parental Participation

- The IDEA and its implementing regulations require that parents be provided an opportunity to be meaningful participants in the education of their eligible children.
- IDEA's procedural safeguards are aimed, in part, at ensuring "that families of such children have meaningful opportunities to participate in the education of their children at school and at home." 20 U.S.C. 1400(c)(5)(B).

Meaningful Parental Participation – Regulatory Requirements

- Giving parents notice of decisions (PWN / NOREP)
- Giving parents information to help them understand their rights (Procedural Safeguards Notice)
- Giving parents notice of IEP meetings and ensuring their participation by offering a mutually agreeable time and place
- Accommodating parents with disabilities and language needs
 - More on this later!

Meaningful Parental Participation – Regulatory Requirements

- Involving parents in decisions made about the child's eligibility for special education and placement
- Obtaining informed consent
- Allowing parents reasonable access to classrooms, in accordance with district policies (Chapter 14)
- Allowing parents access to their child's educational records

▶ Meaningful Parental Participation

A.P. v. Avon Grove School District, 19455 17-18 (September 11, 2017)(Ford)

- “Parental participation does not exclusively concern the parents’ right to speak, but also concerns schools’ obligation to listen. LEAs have no obligation to accept every request the parents make, and may not adopt an inappropriate program only to quell insistent parents. Declining a parental request is not necessarily evidence that participation was denied. Rather, LEAs must seriously consider parental concerns and suggestions, and must have a rational, contemporaneous reason when rejecting parental input. Fortunately for Pennsylvania LEAs, the standardized NOREP provides an opportunity (and a literal space) for schools to say what they have considered and rejected, and why.”

Meaningful Parental Participation

N.M. v. Fairview School District, 19810 17-18 (May 8, 2018)(McElligott)

- Where the school district implemented an inappropriate goal based on parent's insistence, the hearing officer admonished the school district. The goal required student to achieve a certain percentage grade in all regular education courses. After pointing out that the goal was problematic, the hearing officer stated, "[s]imply put, 'making parents happy,' instead of 'let us program appropriately given the student's needs,' almost always leads to flawed programming." Despite this admonishment, the hearing officer did rule in favor of the school district and did not find a violation of a FAPE.

Meaningful Parental Participation

S.M. v. Woodland Hills School District, 20276-17-18; 20287 17-18
(April 29, 2018)(Skidmore)

- A fatal flaw in the development of the evaluation occurred where the parent's input was not obtained. Therefore, the school district was ordered to authorize an independent educational evaluation (IEE) at public expense.
- While additional aids and services may be needed to communicate effectively with parents who have specialized needs, their input is essential to any special education evaluation or reevaluation process.

▸ Twin Pillars of Disability Discrimination Law

- “For decades, the Rehabilitation Act (RA) and its progeny, the Americans with Disabilities Act (ADA), have served as twin pillars of federal disability discrimination law. Both statutes secure the rights of individuals with disabilities to independence and full inclusion in American society and, unsurprisingly, have been constant companions in our case law as it has developed to effect those rights. The RA assures “meaningful access” to federally funded programs, on the one hand, and the ADA provides for “full and equal enjoyment” of public accommodations, on the other, to people with disabilities. When necessary to realize that access and enjoyment, the statutes require “reasonable accommodations,” to be made by actors within the statutes’ reach.

- *Berardelli v. Allied Services Institute of Rehabilitative Medicine*, 2018 WL 3849363 (3d Cir. 2018).

Accommodating Parents with Disabilities

- Parents of eligible students with qualifying disabilities are entitled to accommodations under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as well as the Americans with Disabilities Act (ADA). See 34 C.F.R. 104.3; 34 C.F.R. 104.4; 28 C.F.R. 35.130.
- A “handicapped person” as defined by Section 504 includes “any person who:
 - (i) has a physical or mental impairment which substantially limits one or more major life activities,
 - (ii) has a record of such an impairment, or
 - (iii) is regarded as having such an impairment.”

-34 C.F.R. 104.3.

Accommodating Parents with Disabilities



- No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the public entity.

-34 C.F.R. 104.4; 28 C.F.R. 35.130.

Accommodating Parents with Disabilities

- Schools have a legal responsibility to modify policies, practices and procedures, as necessary to accommodate parents with disabilities. Concept applies to:
 - Involvement in educational decision making
 - Participation in school volunteer activities
 - Events such as graduations, parent-teacher conferences, attend extracurricular events, and other events that are intended to benefit parents

Accommodating Parents with Disabilities

- School must be cautious to avoid requiring more of parents or parent-volunteers who have disabilities, as compared with parents and parent-volunteers who do not have disabilities. Additional conditions or requirements that are placed on parents with disabilities may have the effect of precluding their equal participation in school programs.
- See, e.g., *Hillsboro (OR) School District 1J*, 59 IDELR 82 (OCR 2012)(school improperly required parent with service animal to provide animal's certification, proof of insurance and vaccinations prior to permitting parent to volunteer).

Parent Participation in the IEP Process

Grapevine-Colleyville (TX) Indep. Sch. Dist., 24 IDELR 574 (OCR 1996)

- The parent of an IDEA eligible student complained that she was discriminated against on the basis of her learning disability when the Texas district failed to provide her with a transcript of her son's IEP meetings (termed an Admissions, Review, and Dismissal (ARD) meeting). The district prevailed when it demonstrated that it provided a teacher to read the meeting minutes to the parent, provided a written copy of the meeting minutes, and allowed the parent to audiotape the meeting. The district also maintained an audiotape of the meeting for its own records.

Parent Participation in the IEP Process

Talbot County (PA) Pub. Schs., 45 IDELR 45 (OCR III, Philadelphia (PA) 2005)

- A parent with severe bilateral hearing loss requested computer-assisted real-time translation to effectively participate in her child's IEP meetings. District opted to provide the parent with a laptop note-taker to accommodate her needs. In addition, meeting participants were advised to follow protocol such as making eye contact with parent, refraining from sidebar conversations, pacing speech, etc. to foster effective communication. Participants did not always meet these expectations during the IEP meetings. The Office for Civil Rights (OCR), upon review, determined that the note-taker was not effective in translating discussions that occurred during the IEP meetings and, therefore, parent was not able to effectively participate with the accommodation that had been provided.

Examining the Limits of Aids, Services, Accommodations

- Entities covered by Title II of the ADA such as public school districts may not be required to provide an aid or service if it would result in a fundamental alternation or undue financial or administrative burden on the entity.
- How is this determined? Naturally, on a case-by-case basis!
- Who determines this? School superintendent or financial official, in consultation with the solicitor.

Examining the Limits of Aids, Services, Accommodations

Lake-Lehman (PA) Sch. Dist., 20 IDELR 546 (OCR 1993)

- Complainant filed with OCR on behalf of her hearing impaired sister whose child attended a district school. OCR found the district in violation of 34 C.F.R. 104.4(a) and (b) because it failed to provide a sign language interpreter for the sister at school board meetings. School board meetings were considered “other services” within the meaning of the Section 504 implementing regulation at 34 C.F.R. 104.3(k). The school board’s position that it was only required to provide accommodations for accessibility when it was scheduled to discuss an issue involving the person with a disability was unconvincing to OCR.

Examining the Limits of Aids, Services, Accommodations

Mt. Diablo (CA) Unified Sch. Dist., 44 IDELR 261 (OCR 2005)

- OCR reviewed whether District was required to provide sign language interpreters to parents with hearing impairments who were chaperoning school field trips. Auxiliary aids and services are necessary for equal access to communication or participation only in programs which were operated for the benefit of the complaining individuals, according to OCR. Although the District did not violate ADA or Section 504 in its decision about the school trips, OCR cautioned that District policy, which only provided sign interpreters for parent activities that were “mandatory” was not aligned with the law.

Service Animals

- Title II of the ADA permits the use of service animals in public places, such as public school district programs and buildings. 28 C.F.R. 35.136.
- By law, service animals include dogs and miniature horses that are individually trained to do work or perform tasks for the benefit of the individual with a disability.
- Work or tasks performed by a service animal must be directly related to the individual's disability.

Service Animals

- Public entities must tread carefully when communicating with individuals who have service animals in order to afford the individual all of their legal rights. For example, a public entity “shall not ask about the nature or extent of a person’s disability” when inquiring about the need for a service animal. 28 C.F.R. 35.136(f).





Service Animals

- Two permissible inquiries:
 1. Whether the animal is required because of a disability
 2. What work or task has the animal been trained to perform
- The public entity cannot require documentation of the animal's training or certifications.

Service Animals: What Happens When...

A public entity may ask an individual with a disability to remove the service animal from the premises if under two limited circumstances. If:

1. the animal is out of control and the handler does not take effective action to control it; or
2. the animal is not housebroken.

Service Animals

- If a service animal is removed from school premises, the public entity must give the individual with a disability the opportunity to participate in the service, program, or activity without the service animal.
- If the presence of a service animal conflicts with the needs of another member of the staff or student, such as in the case of allergies, the public entity must work to accommodate both needs and cannot prevent either party from access to the building or event.

Service Animals

Berardelli v. Allied Servs. Institute of Rehabilitative Med., 2018 WL 3849363 (3d Cir. 2018)

- In this case, a 5th grader with dyslexia and epilepsy sought to bring her service dog to school. The Court held that under Section 504, a student request to be accompanied by a service animal is “per se reasonable in the ordinary course.”
- The court found that Section 504’s “reasonable accommodations” provisions also permits the use of service animals to individuals with disabilities where those individuals participate in a program that receives federal funds. The court also held that allergies and fear of dogs are not a valid reason to refuse access of service animals.

Service Animals

Grand Rapids (MI) Pub. Schs., 115 LRP 10965 (OCR 10/21/14)

- Visually impaired parent entered school building to participate in parent/teacher conference with a service animal and was told the dog could not be there with him. The school administrator in charge of the event was concerned with other individuals' allergies and was concerned that dog was not wearing a vest designating it as a service dog. Parent filed a discrimination claim with OCR. Neither of the concerns cited by the school legally permitted them to prohibit the service animal from entering school property, which is a place of public accommodation.

Parents with English Language (EL) Needs

- Interpretation and translation services are essential to ensuring that parents who are English Learners (ELs) are meaningful participants in the education of their IDEA-eligible children.
- Collaboration is key.



Parents with EL Needs: Legal Requirements

Sources of Legal Requirements:

- Title VI of the Civil Rights Act of 1964
- Pennsylvania Human Relations Act (PHRA)
- Equal Educational Opportunities Act (EEOA)
- Elementary and Secondary Education Act (ESEA)
- IDEA
- 22 Pa. Code 4.26
- PA Basic Education Circular, Educating English Learners (ELs)

Parents with EL Needs: Translation and Interpretation

- School must take measures to ensure parent understands IEP team proceedings, including arranging for an interpreter.
- Prior written notice (NOREP) and procedural safeguards must be translated into the parent's native language, unless clearly not feasible. 20 U.S.C. 1415(b)(3)-(4); 20 U.S.C. 1415(d)(2).
- For meaningful parental participation, translation and interpretation are indicated for documents beyond those which expressly require translation by statute.

Parents with EL Needs: Evaluations and Reevaluations

- Evaluations must be conducted in the child's native language "or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer." 34 C.F.R. 300.324(a)(2)(ii); see 20 U.S.C. 1414(b)(3)(A).
- Parent input provided in the context of the evaluation must be obtained with the use of an interpreter or translator, to ensure that it is accurate.

Parents with English Language Needs

T.R. v. School District of Philadelphia, 15181-1314 (May 26, 2015) (Ford)

- Student diagnosed with Other Health Impairment had previously attended a charter school in 2010-2011 and 2012-2013. The student attended a district high school in the spring of 2014, but mother eventually rejected the district's NOREP and filed a complaint, arguing that the district had denied the student FAPE. Hearing officer found for parent. With regard to the procedural violation, hearing officer awarded one hour of compensatory education based on failure to ensure parental participation at a June 2014 IEP meeting. The Hearing Officer held that the school district's obligation to ensure meaningful parental participation "requires inquiry into the Parent's ability to participate in meetings without translation" of their child's IEP. In this case, the District needed to translate the IEP for the parent to be able to engage in the "dialogue contemplated by the IDEA."

Parents with English Language Needs

T.R., et al. v. School District of Philadelphia, 223 F.Supp.3d 321 (E.D.Pa. Nov. 30, 2016)

- A class action lawsuit claiming a systemic legal violation on the part of the School District of Philadelphia was filed, asserting that the District did not provide sufficient translation and interpretation to students and parents with limited English proficiency. Claims brought by plaintiffs under Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), Title VI, Equal Educational Opportunities Act (EEOA) were all permitted to move forward when the school district's motion to dismiss was denied by the Eastern District judge.

Parents with English Language Needs

Manteca Unified Sch. Dist., 12 ECLPR 79 (SEA CA 2014), *aff'd*, *J.L. v. Manteca Unified Sch. Dist.*, 2016 WL 3277260 (E.D. Cal. 2016)

- The school district here provided a Spanish language interpreter to the parent of a student with autism and a speech and language impairment. The district also answered questions posed by the parents about IEPs and evaluations prior to holding the student's IEP meeting to further support parental understanding of the IEP process, and to ensure meaningful parental participation. While parent prevailed on certain claims, they did not prevail on any claims relating to translation and interpretation.

Parents with English Language Needs

H.R. v. Easton Area School District, 17760-1516 (November 7, 2016) (Valentini)

- Pre-teen student with multiple disabilities filed for due process against her school district, IU and the school district that housed the IU-based program the student was attending. One of the issues in the case involved whether the school district had denied the parent meaningful participation by failing to provide documents translated into her native language, proper interpretation during IEP meetings, and failing to inform parent about programmatic supports. The school district had indeed failed to provide translated documents, but for one time, and did not provide a designated interpreter during IEP meetings. The hearing officer also noted that the district did not provide parent IEP documents well enough in advance to allow her to review them alongside her language dictionary. The hearing officer found that the parent's participation rights had been denied and, as a result, the student suffered a substantive deprivation of FAPE, by noting "had mother understood all aspects of the District's programming she would have been able to more effectively intervene on her child's behalf to secure appropriate programming."

Parents with English Language Needs

A.G. v. Philadelphia City School District, 15166-1314 (May 26, 2015) (Ford)

- Guardian who was an English Learner alleged that the school district did not guarantee her right to be a meaningful participant in meetings concerning the provision of FAPE to her child, in violation of IDEA. The record at the hearing demonstrated that the child's Reevaluation Report and IEP meeting invitation forms were issued in writing, in both English and the Guardian's native language. However, critical to the outcome here was the fact that once the IEP meeting occurred the time was devoted to reading the English IEP document aloud in the Guardian's native language, which did not allow a meaningful discussion of the IEP in which the Guardian could participate. The hearing officer found that the IDEA's narrow translation requirements for procedural safeguards and prior written notice were met, but the law's requirements for meaningful parental participation were not.

▸ Parents with English Language Needs

Oakland Unified School District, 66 IDELR 175 (SEA CA 2015)

- District was ordered to translate copies of assessments and IEPs into Spanish for EL parent. The parent was denied meaningful participation in the IEP process for her 12-year-old son due to the district's failure to translate such documents, in this case.

Parents with English Language Needs

Letter to Boswell, 49 IDELR 196 (OSEP 2007)

- This Office of Special Education Programs (OSEP) letter reviewed the benefit of translating special education documents into a parent's native language in order to facilitate meaningful participation. OSEP acknowledged that written translation of IEP documents is not an express requirement of the IDEA but noted the significant benefits that result when districts are able to provide translated IEP documents.

Use of Recording Devices

- Pennsylvania has a wiretap prohibition in its Crimes Code which makes it a felony to intercept by audio recording any oral communication. 18 Pa.C.S.A. 5703. Limited exceptions apply, which permit recording oral communications with the consent of the communication participants. 18 Pa.C.S.A. 5704(4).
- When might recording of a school meeting be appropriate, or even legally required?



▶ Pennsylvania Wiretap Law

...[A] person is guilty of a felony of the third degree if he:

- (1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;
- (2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or
- (3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

Use of Recording Devices

Letter to Anonymous, 40 IDELR 70 (OSEP 2003)

- This case clearly outlines the Office for Special Education Program's viewpoint on the use of recording devices. While districts have the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings, parents must be permitted to utilize recording devices if they need to do so in order to understand the IEP, the IEP process, or ensure implementation of any of the parent's other rights under IDEA Part B.

Use of Recording Devices

E.H. v. Tirozzi, 16 IDELR 787 (D. Conn. 1990)

- Student and parent with limited English proficiency. Court upheld parent's right to tape record an IEP meeting so that she could review it later in conjunction with her language dictionary. The court held this accommodation necessary in order to ensure meaningful parental participation.

Meaningful Parental Participation

Belvidere Cmty. Unit Sch. Dist. No. 100, 112 LRP 12955 (SEA IL 02/27/12)

- A parent claimed that she was discriminated against after the district denied her request to record her child's IEP meetings. The school had a policy normally prohibiting the recording of meetings, which it used as a basis for its denial of the mother's request. Mother was diagnosed with ADHD and dyslexia, and sought to record meetings so that she could review them later. The school provided an advocate to the parent to help her take detailed notes of the IEP meeting, and to review IEP team discussions with the mother and answer her questions about the IEP process. An Illinois independent hearing officer ruled that the school had reasonably accommodated the parent.

▶ Thank you for your
time and attention!

Presenter Contact Information:

Aimee R. Zundel, Esq.
Weiss Burkardt Kramer LLC
445 Fort Pitt Boulevard, Suite 503
Pittsburgh, PA 15219
412-391-9890
azundel@wbklegal.com

Jeni Hergenreder, Esq.
Disability Rights PA
429 Fourth Avenue, Suite 701
Pittsburgh, PA 15219
412-391-5225
jhergenreder@disabilityrightspa.org