

Believing In Achieving



Session 15

Special Education Law 101

Carolyn Waller, Tharrington Smith, LLP

Presentation materials will be posted to the conference presentation materials website after the 63rd Conference on Exceptional Children.

63RD CONFERENCE ON EXCEPTIONAL CHILDREN

Believing In Achieving

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Nuts and Bolts for New Directors

Steering your Program, Staying Afloat,
and Avoiding the Hidden Icebergs

Carolyn A. Waller
Tharrington Smith, L.L.P.
Post Office Box 1151
Raleigh, NC 27602
(919) 821-4711





My role as a special education attorney



- Identifying your greatest vulnerabilities from a legal standpoint
- Providing you a roadmap to safely navigate around the roadblocks and potholes



The Legal Minefields of Special Education

- **Things that will make your palms sweat and your head spin as a new Director:**
 - Messy paperwork
 - Missed Timelines
 - Inexperienced staff, or.....
 - Unfilled critical positions
 - Limited Resources

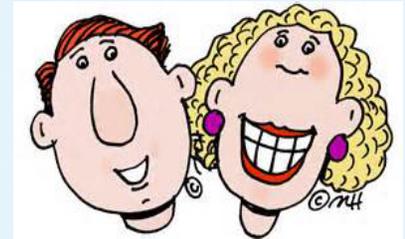




The Legal Minefields of Special Education

- **Issues with parents:**

- Procedural Safeguards of parents
- Divorced parents...or put another way...
 - Properly identifying who is the parent
- Unresponsive parents.....who turn into
- Angry parents
- Breakdown in communication with parents





The Legal Minefields of Special Education



- **Issues with Students:**
 - Timely identifying children
 - Not over-identifying children
 - Progress monitoring
 - Disengaged children
 - Children with chronic behavioral challenges



Let's talk about the paperwork

- I'm drowning in a sea of DEC forms and progress monitoring!!
 - Which of these is true in your district:
 - The procedures are being used to better serve your students; or
 - The procedures are getting in the way of better teaching
 - Are the processes in place helping or hindering your efforts to serve your students?



Just say “no” to busywork

- **Tip One**: Train your staff to use the procedures to improve educational outcomes.
 - **Purpose-driven procedures are never busy work**
 - If they feel like busywork, it’s time to re-examine how you can bring meaning back into the process.



Purpose-driven teams lead to positive outcomes for students

- Goals – individualized or cookie-cutter?
- Meaningful BIPs/behavioral goals
- Pragmatic Speech goals and data
- Measuring goals
- Progress Monitoring/ABC data
- Modifications/Accommodations
- Transition Plans/Services



I know we did this, but....

- Tip Two: Engrain in your staff this Mantra:

--- Paperwork matters ---

If you don't have the documentation, showing it happened can be a tough hurdle to clear in the legal arena





Common documentation pitfalls...

- Not recording all attempts to contact the parent
- Invitations to Conference – list all issues?
- DEC 5s not completed or not completed well
- Delivery of Services paperwork
 - Related Services, Special Education Services, Accommodations
- Participation and progress in a special education reading program
- Throwing out progress monitoring too soon



Missed Timelines and our Child Find Obligations

- **Things to ask as a new Director:**
 - When are we currently making an EC referral?
 - How are we responding to concerns raised by the parents?
 - Do we explain to parents the process of making requests for evaluations in writing?
 - How are we responding to independent evaluations?
 - How engaged are regular education teachers in the intervention process, including progress monitoring?



Child Find

- **Tip Three**: Help your student support teams to embrace the **teamwork approach** to properly intervene and refer students, when appropriate





Consider this

- Second grade student received 3s in reading and writing at end of 3rd quarter, but who wasn't really consistently performing at grade level.
- At parent/teacher conference, the parents are told that their child will really need to hit the ground running next school year and apply himself in order to maintain those 3s next year.
- The parents express concern, and wonder out loud if their child might need additional help, assistance, or should be tested to see if there is anything that needs to be addressed academically.



Keeping it real – responding to parent concerns

- Things that may influence her:
 - At the time of the parent/teacher conference, there are less than 5 weeks left in the school year.
 - The student is a very sweet child, is generally pretty bright, but has been struggling a bit with catching on with reading.
 - There are other students who have far greater struggles, either academically or behaviorally, or both.
 - This child has not really been on your radar this year at all.



Child Find

- **Tip Four**: **Child find creates an *affirmative duty to act***. The district has an obligation to find, and evaluate both children with disabilities and children *suspected* of disabilities.
- The IDEA favors referral.
 - Research-based interventions are the safety net for over-identification



Addressing Staffing Issues

- Inexperienced Staff
- Unfilled Critical Positions
- Use of a Substitute in a Special Education position



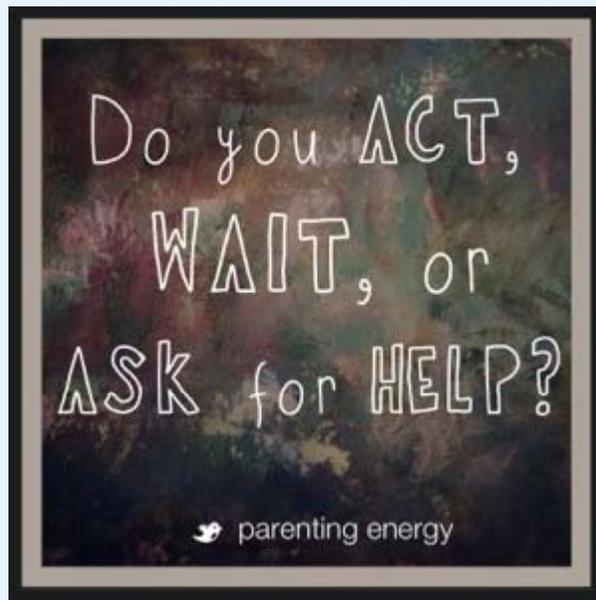


Addressing Staffing Issues

- **Tip Five**: Provide appropriate resources and support to new teachers and individuals serving as long-term substitutes
 - **Ensure that support is well-documented --**



The world of limited resources...



- **Tip Six: Don't be afraid to make the hard choices**
 - Identify your weak spots
 - Triage your needs
 - Know when to look outside the district



Let's Talk About Parents

- Whose rights are protected under the IDEA?
 - **Goal of the IDEA:** To provide appropriate educational services to disabled students
 - **The primary vehicle for reaching that goal:**
 - Providing **parents** with a place at the educational table



Working with Parents

- **Tip Seven**: Assist your teams to properly identify who is the parent under the IDEIA
 - Only the parent can:
 - provide consent
 - Has the procedural protections
 - Can bring due process



Why does this matter?

- If you fail to identify the proper party as the parent, the actual parent has an immediate, and winning claim, that they were denied their place at the educational table





Who is a parent?

- A biological or adoptive parent
- 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
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child



Who is a parent?

- An individual acting in the place of a ... parent with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- A surrogate parent who has been appointed....
- NC 1500-2.24



Tips on identifying the parent

- If you can find the biological parent and they want to remain involved, no one else qualifies as a parent.
- Someone acting “in the place of a parent” must be someone with whom the child lives
- Therapeutic foster parents and DSS case workers never qualify as a parent
- Guardian ad litem \neq Guardian
- Tread carefully when parents attempt to assign their rights to someone else
- Both biological parents have rights.



A word on the surrogate parent

- Tips Eight and Nine:
 - Know when appointing a surrogate is necessary
 - Have a bank of properly trained individuals who the district can appoint as surrogates





The surrogate parent

- Only the LEA has the right to appoint a surrogate parent
- The LEA must make “reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.”
 - 34 CFR 300.519(h)



Access to educational records

- The LEA must permit parents to inspect and review all education records related to the child's identification, evaluation, and educational placement of the child, and the provision of FAPE to the child, that are maintained or used by the district
- The LEA must comply with any request without unnecessary delay and before any meeting regarding an IEP, but in no case more than 45 days
 - 34 CFR 300.613



The minefields of procedural protections...

- **Tip Ten:** Ensure your teams understand what it means to provide parents with access to educational records



The noncustodial parent

- **Facts:**
 - Father (noncustodial parent) brings due process arguing:
 - The IEP does not provide FAPE
 - The district's denied him access to his son's records
 - The district's failed to notify him of IEP meetings and other events relevant to his son's education
 - Divorce decree gives mother the exclusive right to make educational decisions on behalf of the child
- **Question:** *Do any of dad's claims survive?*
 - A. Yes.
 - B. No.
 - C. I don't know!
- *Navin v. Park Ridge Sch. Dist. No. 64*, 36 IDELR 235 (N.D. Ill. 2002), *aff'd* 49 F. App'x 69 (7th Cir. 2002).



The role of the Invitation to Conference

- **Tip Eleven**: Train your teams to embrace the concept that proper notice of a meeting is truly an **Invitation** to the parents;
 - AND the parents are the guest of honor





Questions about the Invitation

- When should I worry about meetings that are scheduled with less than 10 days notice?
- When should I be concerned with parents participating via teleconferencing?
- Do my teams regularly restrict discussion to those items listed on the invitation?



When is notice sufficient?

- ***FACTS:***

- Parents receive an Invitation to Conference, but are unable to attend the meeting at the scheduled time.
- They inform the school, who let the parents participate via speakerphone.
- The parents later complained that they were not afforded an opportunity to meaningfully participate because the meeting was not scheduled at a mutually agreeable time



When is notice sufficient?

- **Question:** *Did the parents have an opportunity to meaningfully participate?*
 - A. No. Teleconferencing is not an alternative to attending a meeting in person.
 - B. No. Teleconferencing is only an alternative if other attempts to hold the meeting at a time when the parent can attend have clearly failed.
 - C. Yes. Teleconferencing can be used to get parents attendance when they otherwise are not available for a meeting.
 - D. Yes. At the time, the parents happily agreed to participate via telephone. They can't come back later and assert they were denied the opportunity to participate because of their attendance via telephone.
- *Drobnicki v. Poway Unified School District*, 53 IDELR 210 (9th Cir. 2009).



When is notice sufficient?

- **Facts:**
 - Parents requested an IEP meeting.
 - School administrator called the parent four times to schedule the meeting, and told the parent over the telephone who would attend.
 - The actual Invitation to Conference was provided to the parent at the start of the meeting
- **Question:** *Is notice in this instance sufficient?*
 - A. Yes
 - B. No
 - C. It depends on unknown factors
- *Salem-Keizer Sch. Dist., 52 IDELR 149 (SEA OR 2009)*



What is a meeting?

- **Tip Twelve**: Make sure all teachers understand the distinction between an informal parent/teacher conference and a meeting under the IDEA



Consider this...



- Parent of an unidentified student asks for a meeting with teachers to discuss an outside evaluation.
- At the meeting, accommodations are decided informally by the team that were recommended by the evaluator
- Parents do not ask to be considered for an IEP, nor do they mention 504. Just say they think their child may need a bit more help.
- *As the attorney for the district, why does this bother me? What potential potholes may be looming down the road?*



Working well with parents

- **Tip Thirteen**: Collaborative relationships with parents who are satisfied should not lead to a relaxation of the procedures, even if this is what the parent seems to want
 - Decisions should be made in the context of a formal meeting and documented in the IEP, the DEC5, and the minutes.



Don't ignore the warning signs

- **Tip Fourteen:** Train your staff to look for the “outside of school” red flags:
 - Parent gets an outside evaluation
 - Student is receiving outside services
 - Parent complains of difficulty with homework
 - Parent wants child to be released to a private school part-time



Parents are now calling you...

- **Tip Fifteen**: Most due process cases stem from a breakdown in communication between the parent and the school.



Keeping the communication channels open:

- Provide draft IEPs ahead of time
- Give ample notice of all things to be discussed at the meeting
- Share results of psychologicals as soon as they become available
- Train teams in discussing the results of IEEs



A word about discipline and MDRs

- **Tip Sixteen:** Train your teams to have the proper discussions
 - Make sure they understand the analysis
 - Help them get comfortable with reviewing all relevant information in the file, without fear they will be ensuring a specific outcome



“All relevant information in the student’s file”

- Grades
- EOGs, EOCs, and other standardized assessments
- Attendance
- The last two psychologicals
 - Academic achievement scores
 - IQ scores
 - Behavioral/Social Information



“All relevant information in the student’s file”

- Documentation available that shows the IEP and BIP are being implemented during the current school year
 - Student’s schedule
 - IEP Meeting Minutes
 - Behavior Checklists
 - H/H Monthly reviews
 - Progress Reports
 - Report Cards
 - Behavior Check Lists
 - Behavioral data
 - Progress Monitoring



Manifestation Determination Review

- Purpose: To evaluate the child's misconduct and determine whether the conduct is a manifestation of the child's disability.
- Questions to Answer:
 - Was the behavior “caused by” the child's disability?
 - Did the behavior “have a direct and substantial relationship” to the disability? OR
 - Was the behavior the “direct result” of the school's failure to implement the IEP?



Working with a Board Attorney

- How can they help me?
- When should I call?
- What will they want to know?
- What's an IEP meeting like with attorneys?





Dispute Resolution with Attorneys

- Mediation
- Resolution Sessions
- Court-ordered mediated settlement conferences





When all else fails....



- State Complaints
- Due Process



Legal Questions?

Carolyn A. Waller

Tharrington Smith, L.L.P.

P.O. Box 1151

150 Fayetteville Street

Raleigh, NC 27602

(919) 821-4711 (office)

(919) 829-1583 (fax)

cwaller@tharringtonsmith.com