North Carolina
EC Directors' Spring Institute
March 11, 2008

- Dispute Resolution Presentation
  - Implications of 4th U.S. Circuit Court of Appeals Decisions July 6, 2004 – March 10, 2008
  - NORTH CAROLINA Due Process Hearing Decisions 2006 - 2008
  - State Complaints, Mediation and Facilitated IEP Meetings
  - 12 Steps to Effective IEP Meetings

Developed by Kate Neale, Lynn Smith, & Pollye Pruitt, Consultants for Dispute Resolution, EC Division, Dept. of Public Instruction

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Implications of 4th U.S. Circuit Court of Appeals Decisions

July 6, 2004 –
March 10, 2008

MM by DM and EM v. School Dist. of Greenville County (2002)

Ruling: Rejected reimbursement for private ESY summer services for elementary child with autism.

What it Means: ESY is only necessary to FAPE when the benefits gained would be significantly jeopardized *if the child does not receive* an educational program during the summer months.

"Likely regression" is not a sufficient basis to compel ESY, because all students might regress to some extent during lengthy breaks from school.

102 LRP 19873

A.B. by D.B. v. Lawson, (2004)

Ruling: IDEA's mandate is that the substance and details of the proper education for a child with a disability is the responsibility of the state and local officials. "The IDEA requires great deference to the views of the school system rather than those of even the most well-meaning parent."

What it Means: Federal courts should defer to the expertise of local educators in reviewing determinations of what constitutes the most appropriate IEP for a child with a disability and not substitute their views on educational policy.

104 LRP 486

AW by Wilson v. Fairfax County School Board (2004)

Ruling: A district's decision to transfer a with a disability to a similar gifted and talented program at another school didn't violate the student's *stay-put*.

What it Means: A **change in *educational placement*** occurs when a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting.

LRP 104 30556

Weast v. Schaffer by Schaffer (2004)
Upheld by US Supreme Court
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JH by JD and SS v. Henrico County School Board (2005)

Ruling: The burden of proving the appropriateness of an IEP belonged on the parents who disagreed with the program.

What it Means: Assigned the burden of proving the appropriateness of an IEP to the parents who challenged their child's program.

104 LRP 35502, 105 LRP 2852

J.S. by Duck v. Isle of Wight County School Board (2005)

Ruling: The court carefully distinguished situations when it would allow an action for damages: where the IDEA would be inadequate to enforce rights or awards made under the statute.

What it Means: The LEA "conceded" its IDEA violations and provided the student with all forms of relief that he was entitled to receive under the statute through a settlement agreement.

105 LRP 13459

Fairfax County Sch. Bd. v. Knight February 12, 2008

Ruling: LEA does not have to pay private school tuition even though student's reading scores improved dramatically.

What it Means: Parent must prove student did not receive educational benefit in public school. LEA is obligated to provide the student with a FAPE, not the best education that private tuition costs can provide.

Unpublished opinion

Avijan v. West 7/12/07

Ruling: LEA only obligated to provide what was clearly document in IEP.

What it Means: IEP Team discusses various options. Must clearly document decision(s) in IEP, then LEA is only obligated to provide what is in IEP.

48 IDELR ed.

Alexandria City School Board v. A.K. (2007)

Ruling: LEA must pay for out-of-state residential placement because IEP only had private day program and no other specificity.

What it Means: IEP **does not always** have to specify particular school, but in this case it did, since that was one of the key issues in dispute.

Note: Supreme Court declined to review decision.

484 F. 3d 672

Practical Lessons from Avijan v. West and Alexandria City School Board v. A.K.

- IEP must be written clearly, so there is no mistaking what the LEA is proposing.
- Make sure there is a clear distinction in the forms and the record of the meeting about what was discussed versus what was agreed upon.
- Don't panic when a team member says something that goes beyond what the school is prepared to do. Stray comments do not bind the LEA. What counts is what is in IEP.
- Play fair with parents. Review the IEP and make sure they understand the entire IEP.

NORTH CAROLINA Due Process Hearing Decisions 2006 - 2008

Office of Administrative Hearings and State Hearing Review Officers

06 EDC 0500
Hearing Review Officer

Ruling: LEA's policy that prohibited placing information about personnel in an IEP was not necessarily inconsistent with federal and state law. The blind adherence to the policy, in this case, would deny FAPE to the child.

What it Means: When including a unique service that is a new term for educators, i.e., *intervenor* or *school nurse,* it may be necessary to provide a clear description of what that services entails on the IEP.

06 EDC 1129
NC Administrative Law Judge

Ruling: The LEA was in violation of "**child find**." The threshold for suspicion is relatively low, and the inquiry is not whether or not the student actually qualified for services but rather, whether he should be referred for a visual evaluation. The record reflected numerous warning signs, all ignored by the LEA, even after the student was found legally blind.

What it Means: "Child find" is an affirmative and objective duty of the public school. Ignorance of a disability does not relieve the public school of liability under IDEA.

06 EDC 1129
NC Administrative Law Judge & Hearing Review Officer

Ruling: The LEA prevented the parents from meaningful and timely participation in the student's education by not providing compliant *Prior Written Notices, Invitations to Conference,* and *Summaries of Evaluations* , and generally misleading and delaying the parents with the *Prior Written Notices*.

What it Means: Failure to provide compliant *Prior Written Notices* and *Summaries of Evaluations* were "a flagrant violation of the procedural requirements of the law" that prohibited the LEA from using the statute of limitations as a defense.

06 EDC 1129
Hearing Review Officer
(Decision is appealed to Federal Court)

Ruling: Upheld ALJ's decision for reimbursement of private school tuition, mileage, and private related services for one year.

What it Means: The LEA was denied the right to use the statute of limitations defense for its systematic and flagrant violations of the procedural requirements of the law.

07 EDC 1382
NC Administrative Law Judge

Ruling: Placement in a separate public school was the LRE for a severely disabled student with significant educational needs.

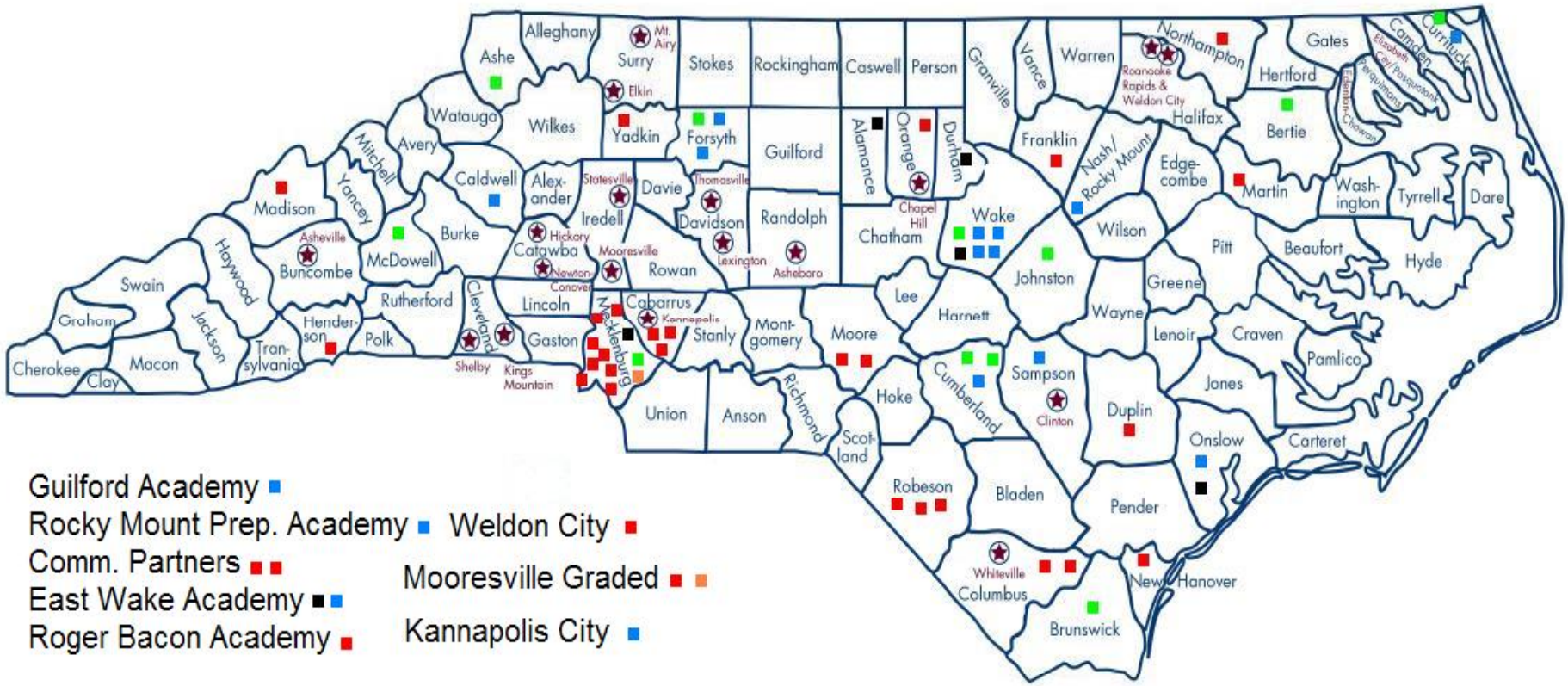
What it Means: Mainstreaming is not required where (a) the disabled child would not receive an educational benefit from mainstreaming into a regular class; (b) any marginal benefit from mainstreaming would be significantly outweighed by benefits which could feasibly be obtained only in a separate instructional setting; or (c) the disabled child is a disruptive force in a regular classroom setting.

07 EDC 2167
NC Administrative Law Judge

Ruling: The IEP and placement in a self-contained setting were appropriate to provide FAPE and meet the standards outlined in IDEA.

What it Means: The "LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully". Although there is a presumption in favor of inclusion, "IDEA does not mandate regular education for every disabled child."

Complaints 06/07



Blue = Compliant; Red = Noncompliant; Black = Withdrawn;
Green = Insufficient & Dismissed; Peach = Set Aside for Due Process

Dispute Resolution Works!

- Take advantage of the opportunity to resolve complaints.
- When preparing a response, if noncompliant, admit mistake and work with parent to resolve issue(s).
- DPI offers mediation.

Facilitated IEP Meetings

- Teach school personnel the *Policies*.
- Make sure someone on the team can interpret evaluation results correctly.
- FIEP Meetings are just well-run meetings.
- Help school personnel learn how to run meetings.

12 Steps to Effective IEP Team Meetings

1. Pre-conference with school personnel to ensure **adequate preparation** by all participants.

(Pre-conference with parents when **difficult issues** are anticipated.)

12 Steps to Effective IEP Team Meetings

2. Provide all IEP team members **evaluation results in advance** so they can review them.

12 Steps to Effective IEP Team Meetings

3. **Meet informally** with parents before the formal meeting (to welcome, answer questions about procedural safeguards, etc.).

12 Steps to Effective IEP Team Meetings

4. **Introduce** participants to each other.

Provide refreshments to promote comfort and a **welcoming atmosphere**.

Create an atmosphere of **mutual respect**.

12 Steps to Effective IEP Team Meetings

5. Seat participants at a **round table** in a comfortable setting, free from noise and distractions.

12 Steps to Effective IEP Team Meetings

6. Post or provide a **written agenda** for all participants.

Agree on **ground rules** (re: civility, interrupting, cell phones, mandatory members staying for entire meeting, etc.).

12 Steps to Effective IEP Team Meetings

7. Encourage each member to be **time conscious**.

Budget the available time. Chairperson politely **redirect participants who wander**.

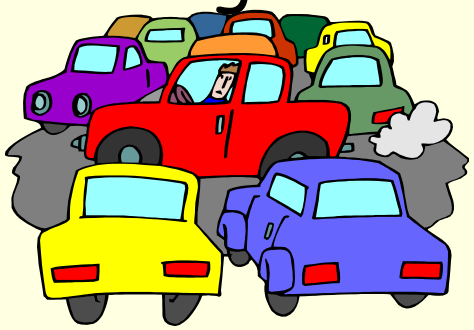
Take breaks as needed.

12 Steps to Effective IEP Team Meetings

8. Provide a **clear purpose** for the meeting; **ensure roles & responsibilities are clear** for tasks occurring before, during, and after the meeting. **Encourage participants** to share in and contribute to a common purpose.

12 Steps to Effective IEP Team Meetings

9. Establish a written **"parking lot"** for issues to be addressed at a later date, rather than letting them get lost.



12 Steps to Effective IEP Team Meetings

10. **Restate the outcome at the end of the meeting for clarity and any necessary corrections.**

Develop an **action plan** for who is doing what & when.

12 Steps to Effective IEP Team Meetings

11. Provide an **"open door"** for airing and sharing between meetings.

12 Steps to Effective IEP Team Meetings

12. End the meeting on a **positive note**; **thank participants** for their time and contributions.

Sample CLOSING REMARKS

What if every meeting ended with such questions as:

Is there anything anyone would like to say before we close for today?

How do we feel about today's meeting – anything we should do differently next time?

Sample EVALUATION FORM

This evaluation form is intended to help us work more effectively together and do out best possible work as a team for the benefit of our student. Thank you for caring enough to share your honest thoughts and feelings.

On a scale of 1-10, with 10 high, please indicate your overall satisfaction with today's meeting by circling on of the following:

1 2 3 4 5 6 7 8 9 10

What did you find most worthwhile or commendable about this meeting?

How might this meeting have been improved, or what might we do differently next time?

Any additional comments?

Consultants for Dispute Resolution

Kate Neale, 919.807.3979 or
kneale@dpi.state.nc.us

Lynn Smith, 919.807.3978 or
lsmith@dpi.state.nc.us

Pollye Pruitt, 919.807.4024 or
ppruitt@dpi.state.nc.us

www.ncpublicschools.org/ec/policy/dispute/