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**KNOW YOUR RIGHTS! HOW TO RESPOND TO
EMERGING ISSUES IN THE FIELD OF SPECIAL EDUCATION**

MASE Best Practices Conference 2017

Presented By

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I. INTRODUCTION

This presentation will address how to respond to emerging legal issues, many of which relate to the use of technology. For example, this presentation will provide options for responding when parents do the following: (1) send their child to school wearing a GPS monitor that records conversations; (2) instruct their child to take pictures or videos of “violations” on a cell phone; (3) assert that they have the right to send private service providers to school; (4) assert they have the right to repeatedly come to school to record their child’s progress, to take video of staff working with their child, or to call their child at school; (5) assert that they have the right

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to regularly take their child from school to receive private therapy; (6) demand that routers or Wi-Fi be turned off in the classroom because their child has electromagnetic hypersensitivity; or (7) object to technology, such as Google Docs, because of data privacy concerns.

II. EMERGING ISSUES

A. Audio Recording

1. “AngelSense” GPS Monitors (affixed to clothing)

a. What issues do GPS monitors raise?

b. What issues does audio recordings raise?

c. What options are available to a school district?

- (1) Prohibit the device;
- (2) Prohibit recording by requiring the parent to turn-off the “listen-in” feature;
- (3) Adopt a policy so you are proactive instead of reactive and the parents do not feel like they are being targeted.

d. Sample letter to parents

2. What are your options if parents demand to record IEP meetings?

3. What are your options if school staff members demand to record IEP meetings and parent meetings? _____

4. What are your options if a teacher demands to bring a union representative to an IEP meeting? _____

5. **Staff Providing Data to Union Representatives:** What action should you take if you discover that a teacher has provided personally identifying information about a special education student, including information about a student's behaviors at school, to a union representative? _____

6. **Parents Instructing Students to Call Home:** Suppose a parent instructs his child to call home and put the parents on the phone whenever the child does not like the actions being taking by the staff. The parent also asserts that the child must have his cell phone with him at all times for safety reasons. What are your options? _____

B. Pictures and Video Recording

1. **Students Taking Pictures or Video:** A parent informs you that he has instructed her child to take pictures or video at school to prove the school staff is violating the IEP. Can you rely on data privacy as a basis for prohibiting the student from taking picture or video at school? What are your options?

2. **First Amendment Claims:** You discover that a student has been taking unflattering pictures of staff members. After taking the pictures, the student posts them on social media along with many demeaning comments about the staff members. When the principal ask the student about the behavior, the parents call the school and assert that the student's conduct is protected by the First Amendment. What options are available to the school?

3. **Staff Recording Without Permission:** You discover that a special education teacher and a regular education teacher in your district have been recording a student engaging in misconduct at school in an effort to gather "proof" that the student needs a more restrictive placement. The teachers have been taking this action without prior approval from a supervisor. What should you do?

4. **Body Cameras:** Assume your district has a Setting IV program. School staff members in the program ask to wear body cameras to protect themselves against false claims by students. What considerations should guide your decision-making? _____

5. **New Texas Law:** Texas recently passed a law requiring video recording of all special education classrooms. Is this the start of a new trend? If so, what are the implications for school districts? _____

C. Parents Sending Private Service Providers to School

1. **Requests to Have Private Providers Attend School.** Suppose that a parent asks or demands to have a private service provider (e.g. PCA, aide, nurse, interpreter, etc.) attend school each day with their child, who has an IEP. The parent states that the family will pay for the service provider, but they believe their child needs the service provider to succeed at school. How should you respond? _____

2. **Obligation to Consider Information.** When a parent of a special education student notifies a school district that a physician, outside provider, or outside agency, such as a local counseling agency, has prescribed a service, aide, or support for a student that may impact the student’s school day, the district is obligated to “consider” the information the parent provides.

- a. This requirement flows from the regulations governing independent educational evaluations and parental participation. *See, e.g.*, 34 C.F.R. § 300.502(c)(1).
- b. The district is not required to accept a “prescription” for a service, aide, or support, even if the prescription comes from a physician and even if it is written into a treatment plan.

3. **Respond with PWN.** When considering the information provided by the parent, the district must determine whether the parent is asking the district to provide the service, aide, or support during the school day, or to allow a third party to provide the service, aide, or support to be provided during the school day.
 - a. If the district determines that the parent is making either type of request, the district must respond by sending the parent prior written notice (PWN) within fourteen calendar days after the date the request was made. The district is obligated to respond with PWN because such a request impacts the educational placement and the provision of FAPE.
 - b. Before issuing the PWN, the district should, at a minimum, consult with school staff members on the student's IEP team. In some cases, the district may find it necessary to convene an IEP meeting to flesh out the reasons for the request. Contrary to popular belief, however, the district is not required to convene an IEP meeting in all cases.

4. **Potential Bases for Denial.** Unless the school district is unable to provide FAPE using its own staff, the district should deny a parent request to allow a third party, such as a behavioral aide, to be present with the child during the school day. The denial can be based on many or all of the reasons stated below:
 - a. The student receives appropriate support throughout the school day and does not have an individual educational need for a behavioral aide during the school day. This can typically be confirmed by reviewing the most recent evaluation report, the PLAAFP statements in the IEP, and the progress the student is making on IEP goals and objectives. Most significantly, if the student is making meaningful educational progress on IEP goals and objectives, the student is receiving FAPE.
 - b. In the absence of an individual educational need for a behavioral aide, assigning a one-to-one behavioral aide to a student – or allowing a one-to-one behavioral aide to accompany a student during the school day – would be educationally inappropriate and detrimental because:
 - (1) A one-to-one aide would violate the mandate to provide educational services in the least restrictive environment (LRE). This conclusion is beyond debate. The Federal District Court of Minnesota has repeatedly ruled that assigning a one-to-one aide to a student in a general education classroom is more restrictive than placing a student in a special education resource room.

- (2) A one-to-one aide would interfere with the natural interactions the student would otherwise have with nondisabled peers.
 - (3) A one-to-one aide would foster dependence rather than independence.
- c. In the unlikely event that the IEP team were to determine a student needs a “behavioral aide,” the school district would be obligated to assign a district employee to serve as the behavioral aide. Minnesota Rule 3525.0800, subpart 2, states that a school district “shall not purchase special educational services for a pupil from a public or private agency when the service is available or can be made available . . . within the district.”
- d. The district cannot regularly allow an outside provider (such as a private nurse, behavioral aide, private S/L clinician, or PCA) to attend school with a student for the following reasons:
 - (1) The presence of an outside provider tends to disrupt the educational environment and the ordinary flow and delivery of instruction.
 - (2) The presence of an outside provider raises data privacy concerns, because the outside provider would have access to private educational data, such as the names of students who are on IEPs and the nature of the services they receive. Unless the outside provider is under contract with the school district, the district would be unable to prevent the outside provider from disclosing private educational data to third parties.
 - (3) The presence of an outside provider raises significant liability concerns. If an outside provider harms a student, the parents will almost certainly sue the district on the theory that the district is responsible for the actions of individuals who have received permission to serve students on school property. Additionally, the district’s insurance may not protect against this type of liability because technically the outside provider is not an employee, agent, or representative of the district.
- e. Under Minnesota Statutes section 123B.03 and School Board Policy 404, the district would arguably be required to conduct a criminal background check before allowing the outside provider to be present in a school on a regular basis. The failure to conduct a criminal background would increase the district’s liability exposure.
- f. The district does not have the ability to supervise, direct, or otherwise control the conduct of an outside provider. As a result, the district does

not have the ability to require the outside provider to follow the student's IEP, to support the teacher's delivery of the curriculum, or to utilize the strategies that the district has determined to be appropriate.

- g. Outside providers are unfamiliar with district policies, practices, and procedures, and outside providers generally do not receive training in the numerous areas that are relevant to school staff, such as mandatory reporting, bullying, discrimination, harassment, data practices, restrictive procedures, and appropriate boundaries.
- h. Having an outside provider in the school setting tends to result in a triangulation of communications between the district, the outside provider, and the parent.
- i. If the district allows an outside provider to accompany a student to school on a regular basis, and the current funding for the outside provider ends, the parent is likely to assert that the district is obligated to provide the services of a one-to-one behavioral aide at district expense. If the district refuses to do so, the parent may pay the outside provider and then bring a claim for reimbursement against the district.

D. Parents Removing Students from School for Private Therapy

1. **The Issue:** What are the legal and educational ramifications of allowing a student to routinely attend school for only part of the regular school day if the student does not have either a medical need or an individual educational need for a shortened school day?
2. **Least Restrictive Environment:** To the maximum extent appropriate, school districts must educate students with disabilities in regular classes along with children who do not have disabilities. This is commonly referred to as the least restrictive environment (LRE) mandate. On a case-by-case basis, the IEP team must identify the LRE for a student based on his or her individual educational needs.
 - a. **Private programming.** Courts generally consider instruction at a private facility to be more restrictive than instruction at a public school. In this regard, the United States Court of Appeals for the Eighth Circuit has held that the Individuals with Disabilities Education Act (IDEA) "creates a clear preference for a *public* educational placement when that placement is not inconsistent with the mainstreaming provisions of the Act." See *Mark A. v. Grant Wood Area Ed. Agency*, 795 F.2d 52, 53 (8th Cir. 1986).
 - b. **One-to-one instruction.** The Federal District Court of Minnesota has held that private tutoring, and particularly tutoring that is one-to-one, is

more restrictive than programming that is provided in a resource room at a public school with other students present. *See Grant v. Independent Sch. Dist. No. 11*, 2005 WL 1539805 (D. Minn. June 30, 2005).

3. **Compulsory Attendance.** The compulsory attendance law requires that students between the ages of seven and sixteen regularly attend a full day of school at either a public school or a nonpublic school, which may include a home school. Under the statute, parents are “primarily responsible” for assuring that a child complies with the compulsory attendance law. Removing a student from school to receive private tutoring during the regular school day is not a lawfully excused absence under state law or the District’s attendance policy—unless a child has a medical need or an individual educational need for a shortened day.
4. **Medical Need.** A parent may submit an application to the principal of a school to have a child excused from attendance for the whole or any part of the time school is in session.
 - a. The school board (or its representative) may approve the application if the board is satisfied that the child’s bodily or mental condition (which may include illness, medical, dental, orthodontic or counseling appointments) prevents attendance at school for the period in question.
 - b. For example, if a student submits a doctor’s note stating that the student has an on-going medical need (as opposed to an educational need) to be out of school for a certain portion of the day, the district may excuse the student for that portion of the day, provided that the Board’s representative is satisfied that the child legitimately has such a need.
5. **Individual Educational Need.** If a parent requests a shortened school day so that a child can receive private services during the regular school day, the IEP team should discuss whether the student has an individual educational need for a shortened school day or for the type of services being offered at the private facility. This is a case-by-case determination that focuses on the student’s unique educational needs.
 - a. **Making progress.** If the student is making meaningful progress on appropriate IEP goals and objectives, the student is receiving a free appropriate public education (FAPE) and does not have an individual educational need for the alternate programming or services offered at a private facility. The U.S. Supreme Court has held that when a student is receiving FAPE, questions of methodology (e.g., Lovass, TEACCH, ABA, and Orton Gillingham) are within the discretion of the school district. Public school districts are not required to maximize educational benefit.

b. **Not making progress.** If a student is not making meaningful progress on appropriate IEP goals and objectives, the IEP team should seek to identify the reason for the lack of progress and should propose changes to the student's IEP that are reasonably calculated to enable the student to make progress. If the team concludes that the student needs the type of services offered at the private facility in order to receive FAPE, the team must determine whether the District is able offer those services in its schools. If the District cannot provide necessary programming, only then may the IEP team propose that such programming be provided through a private source.

6. **Some Options When a Student Does Not Have an Individual Educational Need for a Shortened Day or a Medical Need for a Shortened Day**

a. **Full day IEP.** If the IEP team determines that a student does not have (1) a medical need for a shortened day, (2) an individual educational need for a shortened day, or (3) an individual educational need for services that cannot be provided in the public schools, the IEP team should provide the parents with "prior written notice" and propose an appropriate IEP that offers a full plan of services for the student during the regular school day. This determination must be made on a case-by-case basis because each student has unique educational needs. Parents may exercise their right to accept or reject the IEP that the District proposes.

b. **Agreement through alternative dispute resolution (ADR).** When parents object to a proposed IEP that offers a full plan of services during the regular school day, the District must promptly offer the parents an opportunity to participate in a conciliation conference. The District may also offer the parents an opportunity to participate in a facilitated IEP meeting and/or mediation. Within the context of the dispute resolution process, the parties may enter into a written agreement to resolve the dispute. Depending on the particular facts of the case, the parties may be able to reach a mutually acceptable agreement that meets the educational needs of the student.

c. **Withdrawal and re-enrollment on shared time basis.** Parents have the right to withdraw a child from school in order to enroll the child at a nonpublic school, including a home school. If a parent takes this approach, the parent may subsequently re-enroll the student at the District on a full-time basis or a "shared time" basis. A "shared time pupil" is one who attends public school for part of the regular school day and who otherwise fulfills the requirements of the compulsory attendance law by attending a nonpublic school. Under Minnesota law,

no resident of a district who is eligible for special instruction and services may be denied instruction and service on a shared time basis. Accordingly, when parents reject an IEP that offers a full plan of services for a shared time pupil, the District may propose a services plan that offers special education and related services to the child on a shared time basis.

E. Visits to School

1. How would you respond to the parents in the following scenarios?

- a. Parent-A asserts that he has the right to come to school each day to observe his child at school and ensure that staff are following the IEP.
- b. Parent-B asserts that she has the right to come to school to ensure that her son's Section 504 Plan for severe peanut allergies is being followed.
- c. Parent-C asserts that she has the right to come to school and evaluate and monitor her daughter's progress on IEP goals and objectives in order to determine her present levels of performance in much the same way as school staff members do when they conduct an educational evaluation. Parent-C also wants to interview staff members as part of the IEE she is conducting on her own.
- d. Parent-D asserts that he has the right to come to school and take video of the staff working with his child. He assures the District that he will not take video of any other students and will give the District a copy of the video.

2. Visitor Policy – Definition of “Visitor.”

- a. Why is it important to define the term “visitor”?
- b. Sample definition: A “visitor” means any person who enters a district facility between the hours of 6:00 a.m. and 5:00 p.m. during the regular school year except for the following: enrolled students who are in the facility to attend school, to participate in a school sponsored event or activity, or to attend a meeting of a student-initiated, non-curriculum related group that is recognized by the District; employees who are assigned to work at the facility; volunteers who have been assigned to be in the facility at the time of the visit; central administrators; and members of the public who are in a limited part of the facility to attend an event that is open to the public, such as parent-teacher conferences, a school board meeting or an athletic contest.

3. Visitor Policy – Sign-In Procedures. The following are sample procedures:

All visitors must comply with the following procedures:

- a. Immediately upon entering a District facility, all visitors must report to the administrative office or reception desk. Signage to this effect must be prominently displayed on or near all unlocked doors to the facility.
- b. Upon reporting to the administrative office or reception desk, all visitors must complete a form that requires them to do the following: print and sign their names, state the purpose of their visit, state the time of their arrival, and state the location of the building in which the visit will occur.
- c. Parents who wish to observe their children in the classroom during the regular school day must schedule the visit in advance with the classroom teacher or the principal.
- d. The building principal or a designee will follow this policy in determining whether or not permission will be granted for a visit to a school building. A central administrator will follow this policy in determining whether or not permission will be granted for a visit to a District facility that is not a school building.
- e. If permission for a visit is granted, the visitor will be given a visitor's identification badge containing the visitor's name and the location in the building where the visit will occur.
- f. All visitors must wear the issued visitor identification badge in a conspicuous location at all times while in a District facility building.
- g. If a District employee sees a visitor in a school building without a visitor's identification badge, the employee must either escort the visitor to the administrative office or immediately notify the administrative office of the presence of the visitor.
- h. Upon completing a visit, a visitor must return to the administrative office or reception desk, return the visitor's identification badge, sign his/her name on the same form that was signed upon entering the building, and state the time of his/her departure.

4. Visitor Policy — Communication Protocols. The following is sample language:

The District recognizes that under limited circumstances parents may occasionally need to communicate with their children during the school day. When this need arises, parents must follow one of the following procedures:

- a. Parents may call the office and ask to speak with their child. School staff will then locate the child and instruct the child come to the office to speak with the parent by telephone. This may occur by making an announcement over the school's intercom system. Students generally will not be permitted to place or receive a call from a classroom.
- b. Parents may enter the administrative office of a school building and ask the office staff to call their child to the office. Parents may not go directly to a classroom or to any other location in a District facility without complying with the Visitor Procedures stated in this policy.
- c. Students will not be permitted to make calls, or receive calls, on personal cell phones during any class period.

5. Visitor Policy – Administrative Procedures in Response to Inappropriate Conduct. The following is sample language:

A central administrator, building principal, assistant principal, or designee may take the following steps when a visitor violates this policy or engages in other inappropriate conduct:

- a. Notify the offending visitor that his or her conduct is inappropriate.
- b. Notify the offending visitor that if the conduct does not cease immediately, the visitor will be required to leave the building.
- c. Notify the offending visitor that he or she is required to immediately leave the building.
- d. Contact law enforcement.
- e. Document the incident.
- f. Take other action that the central administrator, building principal, assistant principal, or designee reasonably deems to be prudent or

necessary in order to protect the safety of students, staff, or school property.

- g. Any step or steps of this procedure may be skipped or addressed at a later time if the central administrator, building principal, assistant principal, or designee determines, in the exercise of his or her professional discretion, that immediate removal of the offending visitor is in the best interests of the students or the staff.

6. Visitor Policy – Rules of Conduct. Every visitor policy should specify rules of conduct for visitors.

All visitors must demonstrate respect and civility when interacting with other individuals during a visit. In addition, all visitors must immediately comply with any and all lawful directives given by a District employee, including a directive to leave the building.

Visitors must not do any of the following during a visit:

- a. Violate any law or policy of the District;
- b. Make any threat or engage in any threatening behavior;
- c. Engage in any conduct that is designed to intimidate another person or that could reasonably be perceived as being designed to intimidate another person;
- d. Demonstrate hostility toward another person;
- e. Engage in conduct that is objectively rude;
- f. Make or participate in making any personal attacks against another person;
- g. Make or participate in making any objectively disrespectful, demeaning, disparaging, or insulting comments or statements about or to another person;
- h. Make physical contact with any person other than their own child, unless the physical contact is part of the normal greeting process, such as a handshake, or is reasonably necessary to prevent imminent harm to another person or serious harm to property;
- i. **Photograph, film, or otherwise record any students, employees, or volunteers of the District;**

- j. Enter onto school property while impaired from the use of alcohol or any other chemical;
- k. Create or participate in creating a disruption to the learning or working environment. Examples of disruptive behavior include, but are not limited to, using a raised voice, shouting, or yelling; talking with a teacher or a student while observing in a classroom; and engaging in other conduct that interrupts a lesson while observing in a classroom.

*NOTE: This policy may not be construed to limit the ability or right of any person to file a complaint in accordance with any law or District policy governing the filing of complaints.

- 7. **Visitor Policy – Classroom Observations by Parent.** Visitor policies should address classroom visits or “observations” by parents. For example:

A central administrator, the building principal, an assistant principal, or a designee may deny a parent’s request to observe his or her child in the classroom, or may revoke permission for such a visit, if the central administrator, principal, assistant principal, or designee determines that:

- a. The parent has failed or refused to comply with any part of this policy, including the requirement that classroom visits be scheduled in advance;
- b. The parent observed in the classroom on a prior occasion during the school year and created a disruption or violated this policy in some other respect;
- c. The requested date or time for the visit is educationally inappropriate or inconvenient, such as when a test is being administered, when a substitute teacher or guest speaker is present, or when students are going on a field trip;
- d. The parent has observed the child in the classroom on at least three prior occasions during the school year;
- e. The parent’s parental rights have been terminated or the parent does not have physical custody or visitation rights during the school day or during the specific period of time when the parent wants to observe the classroom; or

- f. The parent's presence in the classroom is not in the best interests of the student, other children, or staff.

- 8. **Visitor Policy – Classroom Observations by Independent Examiner.** Under federal and state law, independent examiners have the right to observe a student as part of an IEE in a manner that is similar to the observations a school staff member would conduct. A visitor policy should address this. For example:

If the parent of a special education student requests an independent educational evaluation or hires an independent examiner to evaluate the student, and the parent requests that the independent examiner be permitted to observe the student in the classroom, the District will allow the independent examiner to visit and observe the student in the classroom to the extent permitted by law, provided that the independent examiner complies with this policy and does not create a disruption.

- 9. **Visitor Policy – Other Visits by Parent.** A visitor policy should contain “catch-all” language to cover other types of visits by parents. For example:

A central administrator, a building principal, an assistant principal, or a designee may deny permission for a parent to visit any part of a District facility if the central administrator, the principal, the assistant principal, or the designee determines that:

- a. The parent has refused or failed to comply with any part of this policy;
- b. The parent violated any rule or procedure of this policy while visiting a District facility on a prior occasion during the school year;
- c. The requested date or time for the visit is educationally inappropriate or inconvenient;
- d. The parent has created a disruption during a prior visit and is likely to create a disruption if permitted to visit again;
- e. The parent's presence in the District facility is not in the best interests of students or staff;
- f. The parent presents a risk of harm to a student, to a staff member, or to District property;

- g. The parent’s parental rights have been terminated or the parent does not have physical custody or visitation rights during the school day or the period of time when the parent wants to visit the District facility; or
 - h. The parent’s actions or words suggest that the parent is impaired from using alcohol or another chemical.
10. **Visitor Policy – Parent’s Right to Appeal Denial of Request to Visit.** To eliminate arguments regarding due process, a visitor policy should contain the following type of language: “If a parent believes that his or her request to visit a District facility has been improperly denied, the parent may submit a written appeal to the Superintendent. The decision of the Superintendent or a designee is final.”
11. **Visitor Policy – Visits by Third Parties.** Visitor policies should address visits by third parties, including reporters for news outlets. For example: “A central administrator, a building principal, an assistant principal, or a designee may, as he or she sees fit, deny a visitor’s request to visit any part of a District facility if the visitor is not a parent of a child who attends school in the facility.”

F. Electromagnetic Hypersensitivity

1. **What is “electromagnetic hypersensitivity (EHS)”?** EHS is a type of “idiopathic environmental intolerance” that is attributed to electromagnetic fields. Claims of EHS are generally characterized by a variety of non-specific symptoms, which the individuals believes to be caused by exposure to electromagnetic fields.
- a. In most cases, individuals who claim to have EHS have real physical symptoms, such as headaches, rashes on their hands, dry skin, abdominal pain, and difficulty concentrating.
 - b. The question is what is causing the symptoms? Symptoms that are vague and non-specific could potentially be caused by exposure to hundreds, or even thousands, of elements in the environment.
2. **What do the studies show?** Many controlled, double-blind studies have been conducted. They uniformly show that no causal link has ever been established between electromagnetic fields and the symptoms reported by individuals who claim to have EHS. The studies are so uniform and conclusive in their findings that some researchers now question whether claims of EHS are “relevant” or worthy of further study.

3. **Not a medically or scientifically valid diagnosis.** The medical, toxicological, and scientific communities do not consider EHS to be a valid medical diagnosis or a valid medical condition. The medical, toxicological, and scientific communities do not recognize environmental illnesses or intolerances as valid medical diagnoses or conditions because such theories are not based on science, they are speculative, and they are not supported by controlled double-blind studies. In the controlled double-blind studies that have been conducted in response to claims about electromagnetic sensitivity, no causation or correlation could be established between symptoms and exposure to electromagnetic waves.
4. **Not a legally valid diagnosis.** The Federal District Court of Minnesota has specifically stated: “federal Courts do not consider environmental illness or MCS a scientifically valid diagnosis.” *Coffey v. Hennepin County*, 23 F. Supp.2d 1080, 1086 (D. Minn. 1998); *see also Brown v. Shalala*, 15 F.3d 97, 100 (8th Cir. 1994). Because the diagnosis is not considered to be valid, a party may not base a legal claim on an assertion that he or she suffers from idiopathic environmental intolerance or EHS. As a result, schools in Minnesota have no obligation to accommodate a student based on a purported diagnosis of EHS.
5. **“Gobbledygook” analogy.** Suppose a parent tells you: (1) her child suffers from a medical condition called “Gobbledygook”; (2) this condition causes her to have skin reactions and gastrointestinal issues whenever she walks into a room with overhead lighting; and (3) the school must accommodate her child by having only incandescent lighting in the lower corners of each classroom she is in, in the school hallways, in the lunchroom, and in the gymnasium.
 - a. If you discover that “Gobbledygook” is not a diagnosis that is accepted by the medical, scientific, or legal community, would you accept the parent’s statements that her child is having non-specific skin reactions and gastrointestinal issues because of “Gobbledygook”?
 - b. Would you provide the accommodations she requested?
 - c. What is the risk of accommodating something that is not real? It does not address the problem. Educators should be considered about what is really going on. Indeed, it is far more likely that the child is experiencing symptoms for a legitimate reason, such as anxiety, rather than “Gobbledygook.”
6. **So why is this an issue?** When parents believe their child has EHS, their belief generally cannot be altered by medical science. When presented with medical and scientific studies showing the lack of any causal connection between exposure to electromagnetic waves and their child’s symptoms, most parents will simply double down and assert that history shows the medical community

has been wrong about many things and is wrong about this matter as well. The parent will then demand that the school district develop a Section 504 plan for their child and accommodate their child by limiting exposure to Wi-Fi.

7. **Is EHS a mental or physical impairment?** No! EHS is a speculative theory. The medical, toxicological, scientific, and legal communities do not consider EHS to be a valid medical diagnosis.
8. **Can a headache, rash, respiratory issue, or digestive issue be a mental or physical impairment?** Yes. These are all medical conditions, or symptoms of a medical condition, which could rise to the level of a mental or physical impairment.
9. **Can a headache, rash, respiratory issue, or digestive issue *substantially* limit a major life activity?** Yes. But the question is one of degree. Ordinary people experience a variety of headaches, rashes, respiratory issues, and digestive issues at various points in their lives. To *substantially* limit a major life activity, a condition must materially impact a student's ability to perform a major life activity as compared to the average student.
 - a. In determining whether a condition substantially limits a major activity, a Section 504 team should consider factors such as the frequency, duration, severity, and impact of a medical condition.
 - b. Generally, an impairment does not substantially limit a major life activity if the impairment is transitory (meaning that it has an actual or expected duration of six months or less) or has only a minor impact.
 - c. Keep in mind that a school district is not required to accept a parent's subjective statements about pain the level or nature of pain that a child is purportedly experiencing. The district may interview the child and ask questions about the level of pain, if any, and about the manner in which the pain impacts the child. Also, the district may ask the parent to provide medical information confirming the level and nature of the pain that the child is experiencing.
10. **How should a school district respond to a parent's demands to develop a Section 504 Plan and accommodate his/her child by limiting the child's exposure to Wi-Fi?** Standing alone, a valid medical diagnosis does not mean that a student has a mental or physical impairment that substantially limits a major life activity as compared to the average student. Similarly, the absence of a valid medical diagnosis does not mean that a student does not have such a mental or physical impairment. Therefore, a school district must not limit its consideration to the diagnosis of EHS or idiopathic environmental intolerance. Instead, a school district must conduct a Section 504 evaluation and consider all

[SCHOOL DISTRICT LETTERHEAD]

[DATE]

[PARENT NAMES]
[STREET ADDRESS]
[CITY, MN ZIP]

RE: Interception of Oral Communications

Dear [PARENT]:

I am writing to address your use of an AngelSense monitor at school. My understanding is that in addition to using the GPS feature of the device to track your child's location, the device also includes a "listen-in" feature, which intercepts oral communications and electronically broadcasts them to your mobile phone or computer through a web application. For the reasons stated below, parents may not use the AngelSense monitor, or any other device, to intercept any oral communications at school. In addition, parents may not use any device to take pictures or video of events that occur at school during the regular school day.

Under federal and state, it is a crime for any person to intentionally intercept, endeavor to intercept, or procure another person to intercept any oral communication. Intercepting includes electronically capturing, transmitting, or otherwise eavesdropping on oral communications. Although the law contains an exception that allows a party to a conversation to record the conversation without the other party's consent, a parent who sends a device to school is not a party to conversations that occur at school. Minnesota Statutes section 626A.02, subdivision 4(b)(1) states that a person who commits such an offense for the first time "shall be fined not more than \$3,000 or imprisoned not more than one year, or both."

In addition to being illegal, intercepting oral communications at school may violate the privacy rights of other students, particularly when the interception involves communications that occur in a special education setting. Teachers regularly identify students by name when providing instruction and answering questions in class. By intercepting oral communications that occur in a special education classroom or setting, parents could readily identify students who receive special education services or other forms of special assistance.

Finally, intercepting oral communications at school has a chilling effect on the natural communications that would otherwise occur between students and between teachers and students. Regardless of age or profession, most individuals feel uncomfortable having another person record or "listen in" to their routine communications. At school, most students would feel uncomfortable answering questions in class knowing that another student's parent was listening to the answers they provided. Similarly, most teachers would feel uncomfortable delivering instruction or having casual rapport-building conversations with students knowing that every word they utter is being intercepted and judged by a parent. Most parents would also feel uncomfortable knowing that another parent was listening in to statements their child made at school.

The District recognizes that GPS tracking devices can provide peace of mind for the parents of students who have an established propensity to run from caretakers outside of school. Accordingly, the District is willing to permit parents to send their child to school with a GPS tracking device if the parents can provide documentation showing that the student has a need for such a device and the District receives an acceptable assurance that the device will not be used to “listen in” or otherwise intercept oral communications at school. I understand that AngelSense has faced this issue with many of its customers and has prepared a written agreement, which parents can sign, stating that the “listen in” feature will not be activated during school hours and, if it is activated in the event of an emergency, school officials will be notified immediately. The District would accept such an agreement as an assurance that the AngelSense monitor will not be improperly used at school.

AngelSense advertises that its GPS tracking devices can be used to capture photos or images, such as a street view image. For the same reasons that Parents may not intercept oral communications at school, they may not use a device to take video of any events that occur at school during the regular school day. Using a device to take still photos at school is also prohibited. By capturing images other students, parents would be able to identify students who receive special education services or other types of special assistance in the school setting. These prohibitions on taking pictures and video do not apply to events that are open to the public, such as a school play or an extracurricular contest.

In summary, the use of any device to intercept any oral communications at school is strictly prohibited. Such conduct violates federal and state law, violates the privacy rights of students, and impedes the natural communications which would otherwise occur in the school setting. The use of any device to capture video or images of nonpublic events that occur at school during the regular school day is also prohibited. The District will permit a child to wear a GPS tracking device at school only if the parents can provide medical documentation showing that the student has a medical need for such a device and the District receives an acceptable assurance that the device will not be used to “listen in” or otherwise intercept oral communications at school.

Please contact me if you have any questions or concerns regarding this matter.

Sincerely,

[NAME]
[POSITION]

c: Student file