



PEMBERTON
LAW



Case Analysis: Balancing Legal Obligations with Practical Considerations

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This presentation is meant to give you some basic information and nothing in this presentation is intended to be relied upon as legal advice. If you have any questions, please contact your attorney or Pemberton Law.

Welcome and Introduction

CASE ANALYSIS

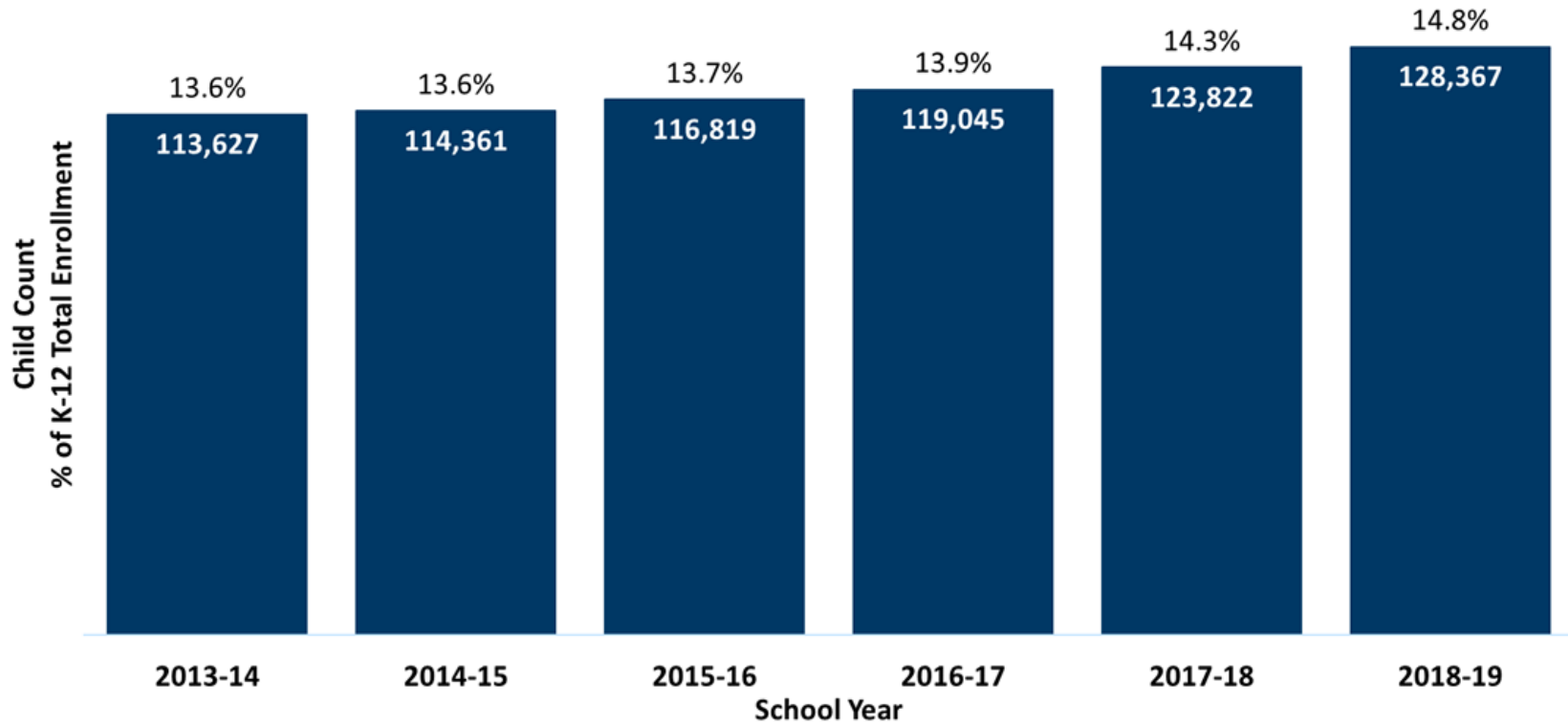
- Current Statistics
- Identification and Evaluation
- Managing Parent Requests and Meaningful Input to IEP Team
- Drafting the IEP
 - Identifying Needs
 - Writing Measurable Goals
- Due Process
- The Use of Experts in Consulting and Due Process
- Conflict Resolution



Current Statistics

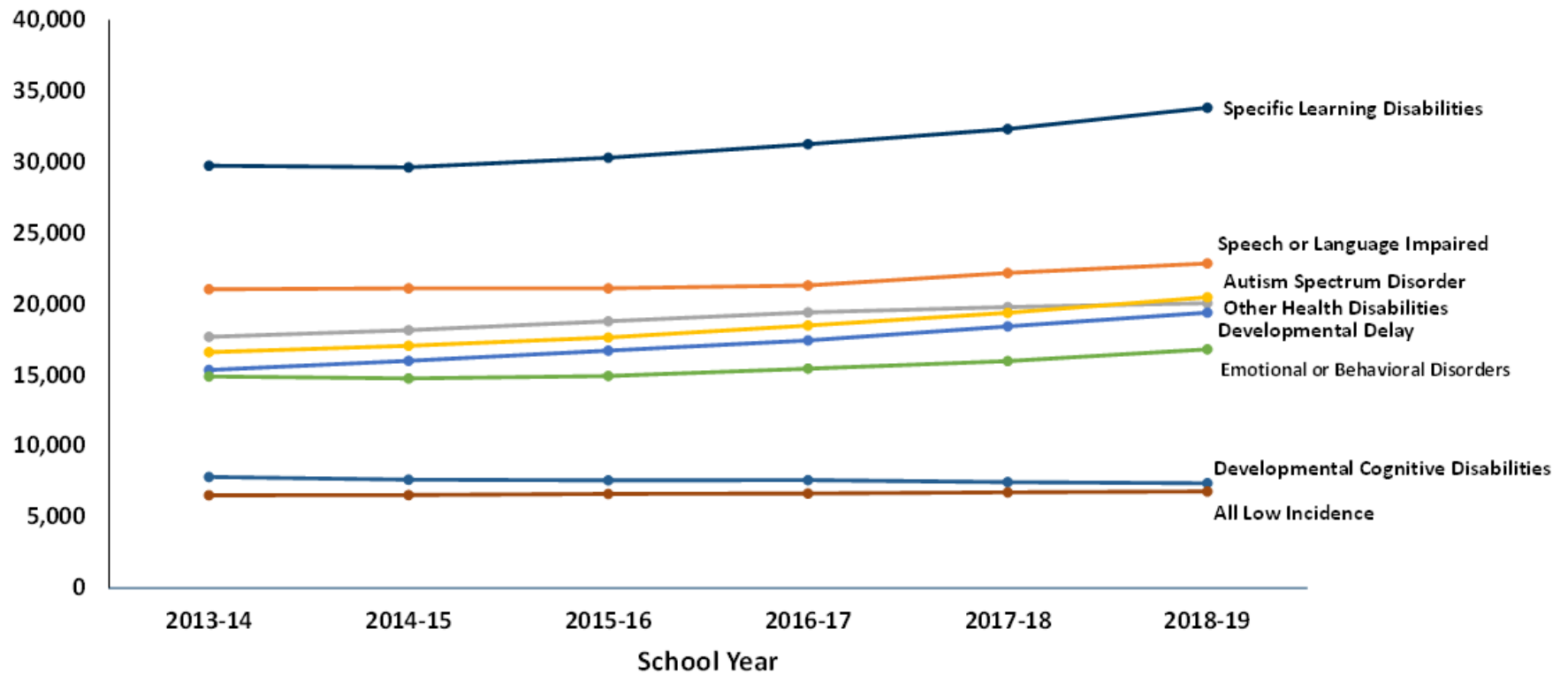
Primary Disability Classification	2018-19 Count	Percent of 2018-19 Child Count
Specific Learning Disability	33,834	22.9%
Speech or Language Impaired	22,857	15.5%
Autism Spectrum Disorder	20,485	13.9%
Other Health Disabilities	20,056	13.6%
Developmental Delay	19,390	13.1%
Emotional or Behavioral Disorders	16,814	11.4%
Developmental Cognitive Disability – Mild/Moderate	5,481	3.7%
Deaf or Hard of Hearing	2,544	1.7%
Developmental Cognitive Disability – Severe/Profound	1,900	1.3%
Physically Impaired	1,635	1.1%
Severely Multiply Impaired	1,527	1.0%
Blind or Visually Impaired	502	0.3%
Traumatic Brain Injury	462	0.3%
DeafBlind	118	0.1%

Students with Disabilities K-12 Enrollment 2014-2018 from MDE



Child Count by Area of Disability—Birth to 21

Minnesota Child Count Ages 0-21
Disability Distribution



Identification and Evaluation

Hypothetical Part #1

CASE ANALYSIS

In the early Spring 2018, Anna Johnson, parent of Emma Johnson (Student), contacted Obama Elementary School in Rural, Minnesota as they were moving from Illinois. Through a series of emails, the parent informed the district that Student had a 504 Plan due to a diagnosis of ADHD and a separate medical condition that caused progressive deterioration of her heart. The parent also mentioned that a special education evaluation may be needed. The district received Student's records from the district in Illinois and a meeting was held with the parent to review and discuss needs for Student. The school records showed Student was making significant growth in all areas with the use of the accommodations in the 504 Plan.



Hypothetical Part #1

CASE ANALYSIS

Student attended Obama Elementary School for the last two weeks of the 2017-18 school year and moved to the Trump Middle School for the 2018-19 school year. A 504 meeting was held at the beginning of the year, and Student was again making progress with the 504 Plan. During conferences in October 2018, the district reported growth in both academics and social adjustment. The parent expressed concerns Student was showing fatigue and significant anxiety at home, and again questioned whether a special education evaluation should be completed. The district reviewed the data again and reported no concerns as Student was progressing academically and socially, without behavioral concerns.



Identification and Evaluation

ATTORNEY: LEGAL OBLIGATIONS

- Child Find
 - Districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with suspected disabilities residing within their boundaries who may be in need of special education and related services. 34 C.F.R. 300.111(a).



Identification and Evaluation

ATTORNEY: LEGAL OBLIGATIONS

- Total Special Education System Plan (TSES)
 - Minn. R. 3525.0750 and Minn. R. 3525.1100, subp. 2.
- Pre-referral Interventions
 - Minn. Stat. § 125A.56, Subd. 1(a).



Identification and Evaluation

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- Is your TSES updated with current staff and contact numbers?
- Is your TSES with Child Find process posted?
- Are new staff trained on the referral process?
- Do staff members understand the need to follow the process?
- Does your intervention team have parent involvement?
- Do your intervention forms include parent signature with date of meeting and date scheduled to review progress?



Identification and Evaluation

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- Have you provided the parent with a copy of the Parent Procedural Safeguard?
- Have you provided the parent with a Prior Written Notice (PWN) outlining what the district is proposing?



Managing Parent Requests and Drafting the IEP

Hypothetical Part #2

CASE ANALYSIS

In November 2018, the parent called the district again asking for a special education evaluation. The student support team again reviewed the available data and decided no evaluation was needed. In December 2018, the district received a letter from an attorney representing the parent, requesting a special education evaluation. In this letter, the attorney stated the district violated the law by not conducting a special education evaluation and the parents were not informed of their rights under the law. A meeting is held with school personnel to review the parent's concerns and the progress Student has made in the educational setting.



Hypothetical Part #2

CASE ANALYSIS

When looking at the data, the district realizes Student has recently been absent either full days or partial days 10 times over the past 4 weeks. These absences relate to medical appointments, and the parent reports some are because of Student's increased anxiety and fatigue. A comprehensive evaluation plan is planned and conducted, with an evaluation report being completed. Student is found eligible under Autism Spectrum Disorder and Other Health Disabilities due to ADHD. The evaluation report identifies six needs. The IEP Team meets in mid-March and decides to focus on 4 of the 6 needs with 4 goals total. The parent rejects the IEP because not all 6 needs are addressed in the IEP. The parent also claims the goals do not have baseline data, are not measurable, and the district did not provide parent with the opportunity to provide meaningful input into the planning of the IEP.



Managing Parent Requests

ATTORNEY: LEGAL OBLIGATIONS

- **Prior Written Notice (PWN)**
 - Provides the opportunity for the parent to voice concerns before the district acts
 - Assists the parent in determining the basis for any disagreement with proposed or refused action and whether to seek a resolution
 - Assists the district in defending claims by documenting decision making, actions of the district, and responses to parent requests
 - Forces parents to "fish or cut bait"



Managing Parent Requests

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- If the parent has requested a special education evaluation, consider if you have scheduled a meeting with the parent, classroom teacher, district representative, school psychologist, and appropriately licensed staff to determine the next best steps based on the data?
- At the meeting, consider if you have determined and documented one of the following:
 1. Plan interventions and schedule time to review
 2. Plan interventions to do while evaluation is in progress
 3. Move to evaluation due to the significant need of the student



Managing Parent Requests

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- Have you provided the parent with a copy of the Parent Procedural Safeguards Notice?
- Have you provided the parent with a PWN that outlines what the district is proposing?



Drafting the IEP

ATTORNEY: LEGAL OBLIGATIONS

- Present Levels of Performance
 - A student's IEP must contain descriptions of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. 34 C.F.R. 300.320(a)(1).
 - Roadmap for IEP
 - Should be detailed, accurate, and objective
 - SWAG
 - Strengths and Progress
 - Weaknesses
 - Assessments
 - Generalization (grades, social skills, etc.)



Drafting the IEP

ATTORNEY: LEGAL OBLIGATIONS

- Development of Goals
 - Statements describing the reasonably expected accomplishments for the student within a 12-month period. 34 C.F.R. 300.320(a)(3).
 - Goals should be specific, objective, and measurable
 - Baseline data is actual data (not an educated guess or estimation)
 - *Endrew F.* U.S. Supreme Court Case: Educational benefit clarified to require an IEP to be "reasonably calculated to enable a child to make progress appropriate in light of a child's circumstances."



Drafting the IEP

ATTORNEY: LEGAL OBLIGATIONS

- Benchmarks or Short-Term Objectives
 - For those who take alternate assessments aligned to alternate achievement standards, statement to include a description of benchmarks or short-term objectives...
34 CFR §300.320(a)(2)(ii)
 - IDEA also requires an IEP to include a description of how the student's progress toward the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annuals goals.
 - *Andrew F. Standard: benchmarks evidence of educational benefit*



Drafting the IEP

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- Is the Present Level of Academic and Functional Performance (PLAFP) aligned with the assessment and state the identified needs?
- Do you have measurable baseline data?
- Are you using SMART goals that align with the PLAFP?
 - Specific – Measurable – Attainable – Relevant – Timely
- Are you trying to address multiple skills in a single goal?
- Is progress clearly measurable as the goal and objectives are written?



Due Process Procedures

Hypothetical Part #3

CASE ANALYSIS

Parent is offered the IEP but rejects it because of the goals and objectives. The district offers a conciliation conference but the parent refuses to meet. The parent then files a complaint with Minnesota Department of Education (MDE) alleging the district violated the law by "providing an IEP that contains goals that are not measurable, and contain no baseline data, and that entirely lack objectives." MDE dismisses the parent's complaint as it does not allege a violation of IDEA. Because this was an initial evaluation, the district attempted to request a due process hearing, but there were no options, absent a mutually agreed upon Alternative Dispute Resolution (ADR) process, to resolve the issues between the parent and the district. In the interim, the parent made complaints to the district about Student's increased anxiety, needing water and snacks continuously throughout the day, and needing sunscreen.



Hypothetical Part #3

CASE ANALYSIS

In May, the district convinced the parent to meet with the case manager, the ASD specialist, and the Director to rewrite the goals with parent input. In a series of 4 separate meetings with the parent and the 2 special education staff members, the group drafts new goals. But the parent once again disputes the goals. In addition, the parent files a complaint with the Department of Human Rights. In June 2019, the district attempts a due process hearing and ADR, but the parent refused to meet and discuss the proposed IEP. The district then received a request for a due process hearing the first day of school in September 2019. The claim alleges the district violated IDEA by "failing to locate, evaluate, identify, and serve Student as a child in need of special education from May 2018 to the present time."



Hypothetical Part #3

CASE ANALYSIS

Relief requested:

- (1) IEP that is reasonably calculated to enable Student to progress through the general education curriculum, advance from grade to grade, and make adequate progress on appropriately ambitious goals and objectives;
- (2) A compensatory education fund in an amount equal to the special education necessary to put Student in the place she would be in presently if the district had properly identified her as eligible for specialized instruction in May 2018; and
- (3) reimbursement for attorney fees.



Hypothetical Part #3

CASE ANALYSIS

A prehearing conference was held within 5 business days of the filing the due process hearing request. The district was also required to convene a resolution meeting within 15 calendar days of receiving the notice of hearing and appointment of the administrative law judge. Within 10 calendar days of receiving the written request for hearing, the district also filed a response that specifically addressed the issues raised in the hearing request. Within 15 days of receiving the hearing request, the district must provide written notice to the judge to challenge the sufficiency of the hearing request. The resolution session may be waived by both parties. The district held the resolution meeting with the parent and parent's attorney. Prior to the resolution meeting, the district decided to hire an expert to do an independent review of the IEP.



Due Process

ATTORNEY: LEGAL OBLIGATIONS

- MDE Complaint Process
 - Parents, individuals, or organizations may file a signed, written complaint with the MDE if they believe a district has violated federal or state special education requirements. 34 C.F.R. §§ 300.151-300.153.
 - The complaint must allege a violation that occurred not more than **one year** prior to the date MDE receives the complaint.
34 C.F.R. § 300.151.
 - The party filing the complaint must forward a copy of the complaint to the district serving the student at the same time the party files the complaint with MDE.
34 C.F.R. § 300.153.



Due Process

ATTORNEY: LEGAL OBLIGATIONS

- MDE Complaint Decision Timeline
 - MDE has 60 days from the receipt of the complaint to issue a decision, unless the complainant agrees to extend to do ADR OR if a due process hearing is pending. If a hearing is pending, the complaint will be put on hold.
 - MDE assigns complaint investigator
 - Complaint investigator contacts complainant to discuss
 - Complaint investigator provides information to parties on mediation (voluntary)
 - Complaint investigator will contact the Director to see if the issues can be resolved informally.
 - Complaint investigator will send letter to the district outlining allegations and another to complainant acknowledging receipt of the complaint.



Due Process

ATTORNEY: LEGAL OBLIGATIONS

- MDE Complaint Decision Timeline, continued
 - Complaint investigator will review documents and determine scope of the complaint, identify issues, and send an issue letter to the parties.
 - The district has 14 days from the date of the issue letter to submit a written response and documents to defend itself.
 - Investigation may include site visit, interviews with staff, and/or request for additional documents.
 - The complainant can submit additional evidence following the district's response, and then the district can reply to the complainant's response.
 - MDE will issue its decision as either no violation or violation
 - If there is a violation, corrective action may be required.
 - If MDE requires corrective action, follow the timeline provided!
 - If not provided, all corrective action must be completed within 1 calendar year of MDE's decision.



Due Process

ATTORNEY: LEGAL OBLIGATIONS

- MDE Complaint Decision Timeline, continued
 - Withdrawal or Dismissal of Complaint for:
 - Complaint filed outside of 1 year from the date of the alleged violation;
 - No violation of state or federal law;
 - Withdrawn by the complainant; or
 - Alleged violation previously resolved by a prior complaint or hearing decision.



Due Process

ATTORNEY: LEGAL OBLIGATIONS

- Due Process Hearing Request
 - The parent or the district may request a due process when they do not agree about the identification, evaluation, educational placement, or provision of a free and appropriate public education (FAPE) to a child with a disability. 34 C.F.R. § 300.507. The parent or the district can also request an expedited due process hearing when there is disagreement with certain decisions regarding discipline matters. 34 C.F.R. § 300.532.
 - The parent or the district must request a hearing within **two years** of the date the party knew or should have known about the matter that is the subject of the hearing, unless certain exceptions apply.
34 C.F.R. § 300.511(e).
 - The party filing a due process hearing request must provide the request to the other party and send a copy of the request to MDE. 34 C.F.R. § 300.508. MDE will forward the request to the Office of Administrative Hearings (OAH), and a judge at OAH will conduct the hearing.



Due Process

ATTORNEY: LEGAL OBLIGATIONS

- Due Process Hearing Request Procedure
 - 30-Day Resolution Period: When a district is notified of a due process hearing request, it must serve notice on the parent, within 2 business days, including the federally required procedural safeguards notice and notice requirements under Minn. R. 3525.3900.
 - If the district is notified of the request instead of MDE, the district must send to MDE immediately, no more than 2 business days following receipt of a request.
 - An Administrative Law Judge (ALJ) is appointed within 2 business days of a request being filed with MDE.
 - Within 5 days of the ALJ's appointment, a prehearing conference is held where:
 - A hearing officer determines the issues and whether an evidentiary hearing is necessary, and
 - Motion for summary disposition considered.



Due Process

ATTORNEY: LEGAL OBLIGATIONS

- Due Process Hearing Procedure, cont.
 - Within 10 days, send a PWN (if haven't provided before based upon decision/action of complaint) and a written response.
 - Within 15 days of receiving the request for hearing, the district must hold a resolution session with the parent and relevant members of the IEP Team who have knowledge of the background.
 - Can be waived by agreement of parties.
 - Not necessary when district files request for due process hearing.
 - If parent(s) do not agree to resolution or mediation within 30 days of receipt of the due process request, the district may submit a motion to dismiss.
 - Hearing/Decision: Issued within 45 days of expiration of 30-day resolution period (unless otherwise extended by ALJ)
 - Appeal: Minnesota Court of Appeals (60 days) or Federal District Court



Due Process

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- Keep clear timelines and records of events.
- Keep files organized.
- Meeting timelines is essential even when presented with items at the most pressing times of the year.
- Establish a solid and trusting working relationship with the district special education attorney.
- Need to do the risk analysis of when to continue with the legal dispute vs. when to settle based on both student needs and the risks to the district.
- Honor confidentiality of any settlement agreement



Use of Experts

ATTORNEY: LEGAL OBLIGATIONS

- Bolsters the district's argument that the challenged service, goal, methodology, etc. meets the requisite standard.
 - Can also assist with resolution before hearing
- Standard (generally): knowledge, skill, training, or education and may testify in the form of an opinion if:
 - The expert's scientific, technical, or other specialized knowledge will help the judge;
 - The testimony based on sufficient facts or data and based on reliable principles and methods; and
 - The expert reliably applied the principles and methods to the facts.



Use of Experts

ATTORNEY: LEGAL OBLIGATIONS

- Personnel Experts
- Outside Experts
- Cost Analysis
- Time of the Essence
 - Disclosure of reports must be done 5 business days prior to hearing



Use of Experts

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- When is it time to call in additional outside resources?
- Agreeing to hire someone to review the IEP and give input brings a fresh pair of eyes to the table.
- Have both parties provided input on the chosen expert?
- How and what input will the team use that the expert provides?



Conflict Resolution

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- Allows parents the chance to be heard
- Prevents this from happening to other parents
- Allows other team members to express how this impacted them
- Takes down walls and build bridges
- Stay vigilant in honoring due process and being responsive to the parent



Key Lessons Learned

SPECIAL EDUCATION DIRECTOR: PRACTICAL CONSIDERATIONS

- The importance of Parental Procedural Safeguards
- Take parental requests for referral seriously.
- Power of the PWN
- Documentation of Data
- Keep communication lines open.
- Willingness to resolve the conflict
- Allow staff the time to process and reflect on the legal journey



Questions?