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**FROM SETTING COMMUNICATION EXPECTATIONS TO CONCILIATION TO
COURT: WHEN PARENTS AND SCHOOLS DON'T AGREE**

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I. Introduction

This presentation will explain what school districts can expect when disagreement with parents escalates. Topics will include: tips for communicating with difficult parents, how to run a conciliation conference, when mediation or a facilitated IEP meeting may be helpful, the MDE complaint process, due process hearings, and how special education cases get to court. Knowing the ins and outs of the dispute resolution processes will help you feel prepared in the event your district finds itself facing such a challenge.

II. Communicating with Parents:

**“So the whole war is because we can’t talk to each other.” Orson Scott Card,
Ender’s Game**

A. It is rare for a conflict to completely blindside special education staff. Usually, they start with some sort of difficulty with parents.

NOTE: These materials and the corresponding presentation are meant to inform you of interesting and important legal developments. While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts addressed in this outline or discussed in the presentation, you should consult with your legal counsel.

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B. Parent rights.

1. Pursuant to Minnesota and Federal law, parents have the following rights with respect to communication with a school about their child:
 - a. To attend and meaningfully participate in IEP meetings, 34 C.F.R. § 300.501;
 - b. Notice of IEP meetings early enough to ensure they have an opportunity to attend the meeting, 34 C.F.R. § 300.322(a)(1);
 - c. Review educational records with respect to identification, evaluation, placement, and provision of FAPE prior to any IEP meeting, due process hearing, or resolution session, 34 C.F.R. § 300.501(a). Pursuant to the Minnesota Government Data Practices Act, parents also have the right to review all educational data about their child within ten days of the request. Minn. Stat. § 13.04, subd. 4.
2. Parents do not have a legal right to:
 - a. Demean or berate staff members;
 - b. Communicate with any staff member at any time of day;
 - c. Communicate with staff via the parent's preferred method of communication; or
 - d. Receive an email response within a unilaterally-selected time frame.

C. Restricting Parent Communications

1. In the event of parent communications that are truly out-of-line, districts can implement time, place, and manner restrictions to curb inappropriate communications. Some examples include:
 - a. Parent may only send emails to an administrator and may not directly communicate with teachers;
 - b. The district will respond to emails once a week unless there is an urgent matter;

- c. Parent may not email district staff at all and may only communicate via mail; and
 - d. School staff will hang up the phone immediately if a parent uses inappropriate language or raises his/ her voice.
2. Access to School Property
- a. Districts should adopt visitor policies that apply to everyone, including parents, in an effort to avoid situations in which parents can enter a school and approach a teacher unannounced.
 - b. Timely place parents on notice, in writing, of inappropriate behavior whenever it occurs.
 - c. Parents who engage in physically threatening or inappropriate language in a school setting may be subject to a no trespass order. However, schools must make exceptions to allow parents to attend IEP meetings or make accommodations, such as holding an IEP meeting at a different location.
3. Important Considerations in Restricting Communication or Access
- a. Make sure any restrictions allow parents to bring complaints through the proper channels. Parents do have the right to advocate on behalf of their child and to make complaints of illegal conduct against the district.
 - b. Be aware of the timing of issuing restrictions. A parent could claim that a district issued restrictions or a no-trespass order in retaliation for advocating on behalf of their child. Ensure that such restrictions are in response to specifically inappropriate conduct by the parent and not merely annoying or persistent advocacy.
 - c. Hand-deliver no trespass orders if possible. A court case decided in 2017 determined that the law requires a person to be on the property and told to leave and not return for a no trespass order to be effective. *State v. Kremmin*, 889 N.W.2d 318 (Minn. App. 2017).

III. Conciliation Conferences:

**“The problem with communication is the illusion that it has occurred.”
George Bernard Shaw**

- A. A conciliation conference is the first official step in resolving a special education dispute. After receiving notice that a parent is rejecting a proposal for which

they were given a prior written notice, a district has a duty to offer a conciliation conference within ten days.

B. Minnesota Statutes Section 125A.091, subd. 7:

A parent must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives [prior written notice]. A district must hold a conciliation conference within ten calendar days from the date the district receives a parent's objection to a proposal or refusal in the prior written notice. Except as provided in this section, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five school days after the final conciliation conference, the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding.

1. What is an “opportunity to meet”?
 - a. Generally, a district must offer the parent the chance to meet. However, if the parent refuses the district's efforts, “the district is deemed to have satisfied its requirement to offer a conciliation conference.” Minn. R. 3525.3700, subp. 1.
 - b. If a parent refuses to conciliate and indicates an intent to go to a due process hearing, “the district must inform the parent of the procedure for requesting the hearing and all other procedural safeguards” required by state and federal law. Minn. R. 3525.3700, subp. 3.
2. Who are “appropriate district staff”?
 - a. The MDE has generally deferred to districts in determining who is “appropriate” depending on the circumstances and basis for the parent's objection.
 - b. At a minimum, conciliation conferences should include someone with decision-making authority, like a Director or Assistant Director.
 - c. Attendees can range from just the Director and parent to the full membership of the IEP team.
3. What if we cannot hold it within ten calendar days?

- a. The statute specifies ten *calendar* days, rather than school days. It can be hard to get a meeting scheduled on that timeline, especially if it falls over summer or a break.
- b. Limiting the number of “appropriate district staff” can help with scheduling conflicts.
- c. If the *parent* is not able to meet within ten days, advise them of the requirement and the district’s availability to meet within ten days. If the parent is willing to meet, hold the meeting after ten days.

C. What happens at a conciliation conference?

1. Let the parent present his/her concerns and reasons for rejecting the PWN.
2. Be open-minded.
3. Do not feel pressured to make a decision on the spot. The district representatives at the meeting can take information back to other district team members and notify the parent of the decision in the memorandum.

D. What happens after a conciliation conference?

Within five *school* days, the district must memorialize the conciliation conference in a memorandum that contains all the elements of a prior written notice, and a proposed IEP if the district is proposing a new IEP as a result of the conciliation conference. Minn. R. 3525.3700, subp. 1a(D.)

IV. Alternative Dispute Resolution (ADR):

“Conflict is inevitable, but combat is optional.” Max Lucade

A. Why should a district consider ADR?

1. ADR is much less time consuming and disruptive to staff than responding to a complaint or preparing for a due process hearing.
2. ADR allows the district to be part of the process of developing the outcome, and the district cannot be required to agree to something it does not want.
3. Sometimes parents may benefit from hearing information from someone independent, even if it is the same message school staff have previously communicated.

4. Mediators and facilitators can be good at pushing everyone to think about different options and perspectives in order to reach a solution.

B. When might ADR be a bad idea?

1. If a party isn't willing to give anything up, ADR will likely be unsuccessful. Both parties must be willing to offer some concessions in order to compromise.
2. If the parties are too far apart in their views on the student, ADR will likely be unsuccessful. If the district sees the student as someone who has few needs and interventions, and the parent sees the student as someone with significant needs, it can be hard to convince either party to change their approach.

C. Mediation

1. What is mediation?

“Mediation is an impartial and voluntary process that brings together parties that have a dispute concerning any matter arising under [IDEA regulations] to have confidential discussions with a qualified and impartial individual. The goal of mediation is for the parties to resolve the dispute and execute a legally binding written agreement reflecting that resolution.” *Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act*, OSEP Memo 13-08 (U.S. Dep't of Ed. July 23, 2013).

2. Who conducts mediation?

MDE offers mediation services for no cost to school districts and parents. Mediators are impartial and do not make decisions or give legal advice to either side. MDE mediators are trained in special education laws as well as mediation strategies.

3. Where is mediation held?

MDE requires the district to arrange a neutral (non-district) location for mediation. The location must have at least two separate rooms: one for district staff and one for the parent(s) and their advocates or attorneys. Districts sometimes use libraries, community centers, churches, or city or county offices for mediation.

4. Who attends mediation?

Generally, a smaller group is better. Typically, a district will have a Director who can make decisions, a case manager, and one or two others depending on the issues. For example, if OT services are at issue, the OT should attend; if an evaluation is at issue, a school psychologist or someone familiar with the relevant portions of the evaluation should attend. A district can have an attorney attend, but MDE “discourages” attorney attendance unless the parent has an attorney.

The parent(s) can bring anyone who might support them during the mediation. Sometimes that is an attorney or advocate, but it could also be a friend or family member.

5. What happens during mediation?

The mediator will introduce him/herself to everyone present and explain the process for mediation. Everyone present will sign a statement agreeing to keep the mediation confidential.

The parties split into two rooms and the mediator will meet with each side separately. When meeting with the mediator, each side will explain their perspective on the dispute and propose a resolution. The mediator will go back and forth between the two rooms to discuss what each party is willing to offer and give up in an effort to bring the parties to resolution.

Every mediator has his/her own style. Some may keep the parties together longer and have each talk about the student’s strengths and challenges. Some may bring the parties together to discuss final details if there is mostly agreement.

6. What happens after mediation?

At the end of a successful mediation, the parties will memorialize their agreement in a written mediation agreement. The agreement is enforceable in court and the parties will sign it that day. 34 C.F.R. § 300.506(b)(6).

If the mediation was not successful, the parties may agree to have another mediation session, or the aggrieved party may decide to pursue other remedies, like a due process hearing.

D. Facilitated IEP Meeting

1. What is a facilitated IEP meeting?

An independent, neutral facilitator guides the IEP team through the process of developing an IEP. It runs like a standard IEP meeting, but the facilitator works to keep the parties on track and can make suggestions or steer discussion in a more productive manner.

2. Who facilitates IEP meetings?

MDE offers facilitators at no cost to parents or districts.

3. Where is a facilitated IEP meeting held?

Like a regular IEP meeting, a facilitated IEP meeting can be held in the district.

4. Who attends a facilitated IEP meeting?

All required members of the IEP team must attend a facilitated IEP team, unless a required member is excused by the parent(s). The parent(s) can bring an attorney, advocate, or others who know the child. Districts are discouraged from having an attorney present unless the parent(s) have an attorney.

5. What happens after a facilitated IEP meeting?

If the parties reach agreement, the new IEP is prepared and the parent is asked to consent.

If the parties do not reach agreement, they can hold another IEP meeting (with a facilitator or on their own) to continue to work on the process.

E. How should we decide between mediation and a facilitated IEP meeting?

The purpose of the meeting should drive this decision. If it is regarding development of an IEP, a facilitated IEP meeting may be best. If the meeting is needed to discuss eligibility, evaluation results, etc., mediation may be more successful.

V. MDE Complaints

**“Spend your efforts making a case as opposed to just making a complaint.”
Jeffrey G. Duarte**

A. The State Complaint process allows anyone (parent, individual, or organization) to file a written complaint with the MDE if they believe a district has violated state or federal requirements related to special education. 34 C.F.R. § 300.153.

1. A complaint can be brought on behalf of an individual student or group of students.
2. The complaint must be based on facts or events occurring within **one calendar year** of filing the complaint.

B. Complaint Process:

1. MDE and District receive copy of written complaint from Parent. 34 C.F.R. § 300.153(d) (party making complaint must provide it to the district at the same time it files the complaint with the state). MDE assigns an investigator and begins sixty day timeline for decision (but MDE can extend timeline).
2. Complaint investigator may request additional information from Complainant.
3. Complaint investigator sends letter to special education director regarding the complaint. Letter will identify issues and relevant statutes and request relevant documents.
4. District has an opportunity to submit a written response to the complaint and provide documents. If the district acknowledges an issue, director can talk with investigator about potential corrective action or informal resolution.
5. Complaint investigator may decide to interview relevant staff. (Previously did mostly by phone but lately more investigators have been conducting in person interviews.)
6. Complainant may provide additional information to complaint investigator.
7. MDE reviews information and makes a determination whether the district violated special education law.
 - a. If no, district will receive letter summarizing factual findings.

- b. If yes, district will receive letter and (possibly) be required to perform corrective action. Corrective action can include: convening IEP team to consider something specific, providing make-up services for missed service times, or training all staff on a specific issue or process. Corrective action usually has a relatively quick timeline.
- c. Either party can appeal a decision to the Minnesota Court of Appeals within thirty days of MDE decision. Minn. Stat. § 14.63. The Court of Appeals can only review legal issues, not factual disputes.

C. Practice Tips

- 1. Ensure that the response sticks to the issues raised. The District does not need to provide background information or documents that are unrelated to the issues set forth in MDE letter.
- 2. If a procedural violation has occurred, the District may want to propose reasonable corrective action. If the District has already addressed the issue, the District should explain what it has done to address the issue and state that it believes its response was sufficient to address the issue.
- 3. Verify with the staff involved what occurred and how they will respond to the issues if questioned by the MDE. The response needs to be consistent with what the staff will report.
- 4. Ensure that you have reviewed relevant emails between the staff and the parents related to the issues so that you are not surprised by emails provided by the parents to the MDE.

VI. Due Process Hearings

- A. A due process hearing may be requested when a parent and a school do not agree about the identification, evaluation, educational placement, or provision of FAPE to a child with a disability. 34 C.F.R. § 300.507. The process is more formal and more akin to a trial than the state complaint process.

B. Resolution Meeting Requirement

- 1. It is the district's responsibility to convene a resolution session "with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the due process complaint." 34 C.F.R. § 300.510(a)(1).

- a. Resolution meeting must include a district representative with decision-making authority. 34 C.F.R. § 300.310(a)(1)(i).
 - b. Parent and district determine who is “relevant.” 34 C.F.R. § 300.310(a)(4).
2. Purpose of the meeting is for parent to discuss the complaint and facts that form the basis for the complaint to give the district an opportunity to resolve it. 34 C.F.R. § 300.310(a)(2). Reaching resolution at this meeting is rare, but does happen on occasion. If resolution is reached at the resolution meeting, parents have three days to consider whether to revoke their agreement. 34 C.F.R. § 300.510(e).
3. A resolution session does not need to be held if:
- a. Parent and district agree in writing to waive the requirement. 34 C.F.R. § 300.510(a)(3)(i); or
 - b. Parent and district agree to go to mediation. 34 C.F.R. § 300.510(a)(3)(ii).

C. Expedited Due Process Hearing

An expedited hearing can be requested when a parent disagrees with a disciplinary change in placement or the outcome of a manifestation determination, or when a district “believes that maintaining the current placement is substantially likely to result in injury to the child or others.” 34 C.F.R. § 300.532(a); Minn. R. 3525.4750.

The resolution session must be held within seven days and a hearing must be held within 20 school days of the request.

D. When Should a District Consider Requesting a Due Process Hearing?

- 1. When a more restrictive setting is needed and parents will not agree.
- 2. When a student poses a danger to self or others.
 - a. Consider whether 45-day unilateral placement is an option. The conditions for a unilateral placement are strict and only apply in limited circumstances.
 - i. The student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function; The definition of “weapon” means “dangerous weapon” as used in federal criminal law and includes: “a weapon, device, instrument,

material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2.5 inches in length.” 18 U.S.C. § 930 (g)(2).

- ii. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function;

A “Controlled substance” means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC § 812 (c)).

An “Illegal drug” means a controlled substance, but not a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law. 34 CFR § 300.530 (i)(2).

- iii. The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

Serious bodily injury is bodily injury that involves: 1) a substantial risk of death; 2) extreme physical pain; 3) protracted and obvious disfigurement; or 4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 U.S.C. § 1365 (h)(3).

The Department of Education has been asked to consider lowering the standard for “serious bodily injury,” but has refused.

- b. Possible options if a district has facts to support its belief that a student presents a serious safety concern, but the criteria for a unilateral placement do not exist:

- i. File a due process complaint requesting an expedited hearing and seek an order changing the student's placement because the student's current placement is likely to result in injury to the student or other students. 34 C.F.R. § 300.532. This expedited hearing process only allows for an order changing the placement for 45 school days. Thus, the district may want to consider proposing a change of placement and requesting a regular due process hearing. The district could then argue that the stay-put placement while the hearing is pending should not be the current placement given the serious safety concerns.
 - ii. File for an injunction under Minnesota law requesting a court order prohibiting the student from attending school.
3. To defend a District evaluation rather than pay for an IEE.
4. Downsides to requesting a hearing
 - a. Costs
 - b. Staff time and morale
 - c. Parent may request a hearing in response
 - d. Risk of loss and responsibility to pay parent's attorney fees

VII. Court

Aggrieved parties have the right to appeal an adverse complaint or due process hearing decision. A complaint decision must be appealed to the Minnesota Court of Appeals, while a due process hearing decision may be appealed to either the Minnesota Court of Appeals or the Federal District Court.

VIII. Other Official Complaints on behalf of Disabled Students

A. Minnesota Department of Human Rights (MDHR)

Parents can make a complaint for disability discrimination in education based on the Minnesota Human Rights Act.

B. Office of Civil Rights (OCR)

Parents can also make a complaint for disability discrimination to the OCR asserting their child has been discriminated against on the basis of disability in violation of Section 504 or the Americans with Disabilities Act (ADA).

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