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Family Feud: Legal considerations for dealing with difficult family dynamics

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I. WHAT TYPES OF INDIVIDUALS MAY EXERCISE PARENTAL RIGHTS?

- A. Who is a Parent?** Generally, the term “parent” refers to a biological parent, adoptive parent, or legal guardian. *See, e.g.*, Minn. Stat. § 120A.22, subd. 3; Minn. Stat. § 121A.41, subd. 6.
1. FERPA also defines a “parent” to include “an individual acting as a parent in the absence of a parent or a guardian.” 34 C.F.R. § 99.3.
 2. **Special Education:** In the context of special education, the term “parent” also includes “an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.” 34 C.F.R. § 300.30(a)

NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. 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 discussed in the presentation or addressed in this outline, you should consult your legal counsel. ©2019 Ratwik, Roszak & Maloney, P.A.

3. **Grandparents:** Grandparents are generally not considered “parents” unless they have been appointed as a child’s legal guardian.
 4. **Stepparents:** A stepparent has no parental rights unless the stepparent adopts the child or the child’s “parent” delegates parental authority. Minn. Stat. § 259.59.
 5. **Parents of adult children:** Generally speaking, parental rights transfer to children upon the age of majority. Parents of a student over 18 may still have the right to access the student’s data under FERPA if the student is a dependent on the parent’s tax return. In addition, parents of adult children may retain rights to participate in special education decision-making in specific circumstances.
 6. **Adoption:** Adoption generally removes “parental responsibilities” from a child’s biological parents and prevents the biological parents from exercising any legal rights over the child. Minn. Stat. § 259.59, subd. 1. Adoption by a stepparent does *not* terminate the legal rights or responsibilities of the parent to whom the stepparent is married. *Id.* subd. 1a. Adoptive parents are “legal parents of the child with all the rights and duties” associated with being a legal parent. *Id.* subd. 1.
 7. **Unmarried parents:** The biological mother of a child born to a mother who was not married to the child’s father when the child was born and was not married to the child’s father when the child was conceived has sole custody of the child until paternity has been established or until custody is determined in a separate proceeding. Minn. Stat. § 257.541, subd. 1. If paternity has been recognized, the father may petition for rights of parenting time or custody in an independent action. The proceeding must be treated as an initial determination of custody wherein the courts will assign legal and physical custody according to the best interests of the child. Minn. Stat. § 257.541, subd. 3.
- B. Who is a Guardian?** A guardian is an individual appointed by the court to act as a child’s “parent” if both parents’ parental rights have been terminated, or if both parents have died. A court may appoint the Minnesota Commissioner of Human Services, a licensed child-placing agency, or an individual who is willing and capable of assuming the appropriate duties and responsibilities related to the child as the child’s guardian. Minn. Stat. § 260C.325, subd. 1.
1. If the Commissioner of Human Services is appointed as the “guardian,” the child becomes a ward of the state.

2. Upon appointment by a court, a guardian receives “legal custody of the child,” including the right to make educational decisions on behalf of the child. Minn. Stat. § 260C.325, subd. 4; *see also* Minn. Stat. § 524.5-207 (guardian has powers of a parent whose rights have not been terminated).
3. The termination of parental rights by court order “severs and terminates” a parent’s “rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support” Minn. Stat § 260C.317, subd. 1.

C. **Delegation of Parental Rights.** Minnesota law allows “parents,” “legal custodians,” or “guardians” of minor children and legally incapacitated persons to delegate parental rights “by a properly executed power of attorney.” Minn. Stat. §524.5-211.

1. By law, the maximum time period that such a delegation can be effective is one year.
2. A “parent” who wishes to delegate parental authority must give or mail a copy of the delegation document to any other parent within 30 days of its execution unless: (1) the other parent does not have “parenting time” or has “supervised parenting time;” or (2) there is an Order For Protection against the other parent to protect the parent who is delegating his or her power.
3. A parent cannot delegate his or her authority to consent to marriage or adoption of a minor child.
4. Parents may also delegate authority by designating a standby custodian or temporary custodian in accordance with Minnesota law.

II. CUSTODY: THE BASIS OF PARENTAL RIGHTS

A. **What is Custody?** There are two types of custody: legal and physical.

1. **Legal custody:** “the right to determine the child’s upbringing, including education, health care, and religious training.” Minn. Stat. § 518.003, subd. 3(a). The parent who has “legal custody” has most, but not all, parental rights.
2. **Physical custody:** “the routine daily care and control of the residence of the child.” Minn. Stat. § 518.003, subd. 3(c).

- B. Joint Custody.** Depending on the custody arrangement or divorce decree, parents might share custody of minor children. In such cases, the parents are said to have “joint custody” of the child. Joint custody can be legal, physical, or both.
- 1. Joint legal custody:** When parents share joint legal custody, “both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child’s upbringing, including education, health care, and religious training.” Minn. Stat. § 518.003, subd. 3(b).
 - 2. Joint physical custody:** If parents have joint physical custody, “the routine daily care and control and the residence of the child is structured between [the parents].” Minn. Stat. § 518.003, subd. 3(d).

III. MARRIAGE, SEPARATION, AND DIVORCE: HOW MARITAL STATUS AFFECTS EDUCATIONAL DECISION-MAKING AUTHORITY

- A. Married Parents.** In the case of children born to a married couple, the district must assume that both parents have full parental rights and share custody and decision-making authority.
- 1. “Separated” parents.** Unless the parents are *legally* separated, the parents are still married, even if they are not living together. If the parents are legally separated, the school should review a copy of the separation order, like with a divorce, to determine the effect of the separation order on custody.
 - 2.** Absent a legal separation decree or agreement or court order that provides otherwise, both separated parents have equal decision-making authority.
- B. Divorced Parents.** Most disputes between parents arise in the context of divorce. Often, one parent tries to prevent the other parent (or his or her new spouse) from accessing the student or making decisions about the student. In the case of divorce, the parents’ rights are entirely dictated by the scope of the custody and/or divorce order.
- 1. Common rights of non-custodial parents.** Unless a court determines otherwise and makes specific findings to that effect, each parent has the following rights upon divorce regardless of which parent is awarded custody of the child:

- i. Each party has the right to access and receive copies of school, medical, dental, religious training, and other important records and information about the minor child.
- ii. Each party has the right to access information regarding health or dental insurance that is available to the minor children.
- iii. Each party must keep the other party informed about the name and address of the school that the minor children are attending.
- iv. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend parent-teacher conferences.
- v. In the case of an accident or serious illness of a minor child, each party must notify the other party of the accident or illness, the name of the health care provider, and the place of treatment.
- vi. Each party has a right to reasonable access and telephone contact with the minor children.
- vii. Courts may adjust, limit, or waive these rights, if it determines that doing so is necessary to protect the welfare of a party or a child. Minn. Stat. § 518.17, subd. 3(b). Unless and until the district is satisfied that such an order terminates these rights, however, the district should assume that both parents have the rights described above.

2. Joint custody and educational decision-making. If one parent has sole legal custody, that parent has the final educational decision-making authority. However, parents with joint legal custody generally have equal decision-making ability with respect to educational decisions, absent a court order to the contrary.

- i. If the parents have joint legal custody, the permission of only one parent is generally sufficient with respect to most educational decisions. However, with respect to an initial IEP or initial special education evaluation, the written objection of either parent can prevent the school district from proceeding with the initial evaluation or initial IEP. *See J.H. v. Northfield Pub. Sch. Dist. No. 0659-01*, No. A08-1213, 2009 WL 1182199 (Minn. Ct. App. May 5, 2009)

- ii. State and federal special education laws also grant parents certain rights independent of whether they have legal “custody.” For instance, a non-custodial parent has the right to object to an initial special education evaluation or IEP. Minn. Stat. § 125A.091, subd. 5. In addition, either parent has the right to initiate a due process hearing to challenge a school’s educational decision, regardless of whether the other parent agrees with that decision. *Letter to Arnold*, 211 IDELR 297 (OSEP 1983); *see also Westside v. Union Sch. Dist.*, 35 IDELR 88 (SEA Cal. 2001).
 - iii. When parents with joint legal custody cannot agree on a major educational decision (e.g. which school the child should attend), that decision may need to be made by a court according to the best interests of the child. *Himley v. Himley*, No. A12-1876, 2013 WL 4504379 (Minn. Ct. App. Aug. 26, 2013)
3. **Disputes between parents with joint legal custody.** Depending on the type of decision, the district may need permission from both parents to proceed with a particular action. In other cases, it may be appropriate to accept one parent’s permission. In order to avoid the appearance of impropriety, districts are advised to develop and consistently implement a policy addressing these types of situations.

IV. PARENTAL REQUESTS TO ACCESS STUDENT RECORDS

- A. **Equal Access to Student Data.** Under the FERPA, school officials are required to provide a full right of access to records to *both parents* unless the school has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody “that specifically revokes these rights.” 34 C.F.R. § 99.4.
1. Minnesota Statutes section 120A.22, subdivision 1a, states: Upon request, a noncustodial parent has the right of access to, and to receive copies of, school records and information, to attend conferences, and to be informed about the child's welfare, educational progress, and status, as authorized under section 518.17, subd. 3.
 2. Minnesota Statutes section 518.17, subdivision 3(b), states: Absent a court order with specific findings to the contrary, each parent is legally granted the right to access records and information about the child and to be kept informed by school officials about the child’s welfare, educational progress and status.

3. Minnesota Rule 1205.0500, subpart 2(B), states: A school district shall presume the parent has the authority to exercise the rights inherent with the Minnesota Government Data Practices Act unless the school district has been provided with evidence that there is a state law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

B. Responding to Parent Request to Limit Access to Data. If a parent requests that the district no longer provide information to the other parent, the district should request that the parent produce a copy of the court order (typically a divorce decree or custody order) that limits the other parent’s rights. If no such document exists, or if the document does not terminate the parent’s right to access data, then the district cannot grant the parent’s request.

C. Participation in a Custody Proceeding. If a school employee is issued a subpoena to testify in a divorce or custody proceeding, contact your legal counsel. Arguments can be made to avoid having school officials appear in family law matters and, if school officials are required to respond to a subpoena or testify, steps must be taken to protect the school district from potential data practices claims.

In custody disputes, parents and their attorneys occasionally ask teachers and counselors to provide written statements in support of one parent, with the understanding that the statement will be submitted in the custody proceeding. These statements are generally opinions of the educators, which then lead to employees being called as witnesses in the custody proceedings. There is no requirement under the law for school districts to provide such statements and preparing such a document may give rise to an appearance of favoritism.

D. Parents may Authorize Other Individuals to Receive Student Data and Attend Parent Conferences. Pursuant to the Minnesota Government Data Practices Act, parents or guardians may designate, in writing, any individual to attend school-related activities and conferences. If such a designation is made, school officials can release student data to that individual, including data released as part of parent teacher conferences. Minn. Stat. § 13.32, subds. 10(a) and 10(b).

E. School Districts May Not Release Data About a Parent to the Parent’s Ex-Spouse. Data on parents is “private data.” Minn. Stat. § 13.32, subd. 2(c). The Minnesota Department of Education has opined that school districts cannot release private data about one parent to that parent’s former spouse. Department of Administration Advisory Opinion 05-006. To that end, if a parent requests data that includes data on the student and the parent’s ex-spouse, the district may

be required to redact data that would identify the ex-spouse from the student's records that it produces. *Id.*

V. THE DISTRICT IS GENERALLY NOT REQUIRED TO HOLD SEPARATE MEETINGS TO ACCOMMODATE DIVORCED PARENTS

- A. **Separate Meetings are Not Required.** Absent a court order to the contrary, both parents have the right to attend school events and parent-teacher conferences. But a school district is *not* required to hold a separate conference for each parent. *See* Minn. Stat. § 518.17, subd. 3, and § 120A.22, subd. 1a. Similarly, a school district does not need to hold separate IEP meetings for divorced or separated parents of a child receiving special education services under IDEA.

Possible Exception: Order for Protection. Minnesota Statute § 518B.01, also known as the Domestic Abuse Act, provides that an individual can petition the court for an Order for Protection (“OFP”) in the case of abuse in the home between family or household members. The relief provided by an OFP is specific to the individual petitioner’s circumstances and may include ordering the abusing party to have no contact with the petitioner whether in person, by telephone, mail, e-mail, messaging, through a third party, or by any other means. A school district should request and retain a copy of any OFP.

- B. **Accommodating Tense Situations.** In some cases, divorced parents cannot be in the same room with one another for legal or personal reasons. If there is a meeting that the parents both wish to attend or have a right to attend (such as parent-teacher conference), the school could try to accommodate their situation without offering separate meetings. Possible accommodations include allowing one parent to appear by telephone, or having an administrator, or even a police resource officer, available to defuse tense situations.
- C. **The District May Offer Separate Meetings if the Situation Warrants.** In some cases, it is simply not worth it to attempt to force the parents to attend a meeting together. In other cases, such as when there is an Order for Protection, it is simply not feasible to convene a joint meeting. In those cases, there is nothing that prevents the district from holding separate conferences.

VI. LIMITING PERSONAL INTERACTIONS BETWEEN NON-CUSTODIAL PARENTS AND STUDENTS

- A. School districts should adopt a policy or protocol for determining who is authorized to visit or pick up a child at school.

- B.** A divorced parent can prohibit the other parent from accessing the student at school, but only if the parent has sole legal and physical custody of the child and the court order regarding visitation sets out parenting time that does not include access during school hours; or in some instances if, an Order for Protection precludes access.

If the parent has sole legal and physical custody, the parent may also prohibit the other parent's spouse/significant other/parents from visiting the student or picking up the student.

- C.** A separated parent may not limit the other parent's ability to access the student at school unless there is a legal separation agreement, custody order, Order for Protection, or other document that restricts the other parent's ability to have contact with the student.

Absent such a court order, a separated parent also has no authority to prevent an individual (whom the other parent has authorized) from visiting the student at school or picking up the student.

- D. Responding to Parental Requests to Limit Access.** If a parent requests that the school district prevent the other parent from accessing the student at school, the district should carefully review and follow its policy or protocol for determining who is authorized to visit or pick up a child at school.

If a court order or custody decree exists, make sure that the school district has a copy of the entire order. The district should also exercise due diligence to verify that the order is current and complete. In so doing, the district may wish to give the other parent a chance to verify the order or else produce a more recent order.

1. The district should also request a copy of any Order for Protection that may be in place.
2. These issues are often contentious and potentially lead to litigation. It may be beneficial to contact legal counsel to make sure that the district has a sound legal basis for granting or denying the parent's request.

VII. TIPS FOR ADDRESSING PARENTAL HOSTILITY IN THE SCHOOL SETTING

- A. Interactions with Divorced Parents.**

1. **Equal Treatment.** Unless the district is aware of a court order to the contrary, it must provide parents with equal access to the student, meetings, and other aspects of the student's education.
 2. **Neutrality.** The district should not take sides in a custody dispute or divorce proceeding. This includes "formal" actions, such as conversation at a parent-teacher conferences, as well as informal or personal comments to or about one of the parents.
- B. Removal from District Property.** If a parent or other individual becomes hostile towards staff members, Minnesota law allows a principal or the principal's designee to direct the individual to leave the school and not return for up to a year. It is a misdemeanor for any individual to violate such an order. Minn. Stat. § 609.605, subd. 4.
1. Section 609.605 also allows principals to detain individuals who violate this prohibition until a police officer arrives.
 2. Administrators should be prepared to defend their decision to prohibit a parent from entering the property. Parents may allege that the district banned them from its property based on a protected class, in violation of their constitutional rights, or otherwise in violation of the law. In order to prevail in such a lawsuit, the district will need to show legitimate reasons for its decision to remove a parent of an enrolled student from its grounds.

VIII. DEALING WITH DIFFICULT PARENTS IN THE SPECIAL EDUCATION CONTEXT

A. Legal Obligations.

1. **School districts have a legal obligation to provide parents an adequate opportunity to meaningfully participate in the IEP process.**
 - i. The IDEA requires that all significant decisions regarding a disabled child's program of education must be made, in the first instance, by the IEP team, including the parents. Thus, when presented with a parent's request for additional services or some other sort of revision of a student's special education program, refer the matter to the student's IEP team for consideration. The person receiving the request should state that only the IEP team can make that type of decision and that he/she will ask the IEP manager to schedule an IEP meeting to discuss the parent's request or concern.

- ii. Under the IDEA and the regulations implementing it, school districts must ensure that parents have an opportunity to meaningfully participate in IEP meetings. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.322.
 - a. This includes notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.322(a).
 - b. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, such as arranging for a telephone conference call. 34 C.F.R. § 300.222(c).
 - c. School districts must take whatever action is necessary to ensure that the parent(s) understand the proceedings of the IEP Team meeting, including arranging for an interpreter as appropriate. 34 C.F.R. § 300.222(e); *see also Belvidere Cmty. Unit Sch. Dist. No. 100*, 112 LRP 12955 (SEA IL 2012) (hiring an advocate to take detailed notes and explain the IEP team's discussions was an appropriate accommodation for a mother with ADHD and dyslexia).
- iii. The IEP team must fully consider any request that parents make to change the identification, evaluation, or special education services provided to their child. Full consideration entails consideration of all facts and circumstances relevant to the decision, as well as the range of available alternatives.
 - a. The term “consider” is not synonymous with “accept,” “agree,” or “incorporate.” *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 805-06 (8th Cir. 2011). An IEP team “considers” parental requests when it discusses them at a team meeting. *Id.* Actually incorporating parent input into the IEP, however, is strong evidence that the team “considered” the parent’s request. *Id.*
- iv. The IDEA does not require that school districts simply accede to parents’ demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999). A school district’s adherence to a decision does not constitute a procedural violation

of the IDEA simply because the district did not grant a parent's request. *Id.* at 658.

- a. Parents have the right to participate, not to dictate the IEP team decisions. *Slama v. Independent Sch. Dist. No. 2580*, 259 F.Supp.2d. 880, 885 (D. Minn. 2003) (“no parent of a public school child – whether disabled or not – is entitled to select every component of the child’s education . . . an IEP is to be created by an IEP team, and not dictated by the parents of the student”).
- b. Parental preference alone cannot be the basis for compelling a school district to provide a particular education plan for a child with disabilities. *Slama*, 259 F.Supp.2d. at 885.

2. Considerations regarding an IEP team’s obligation to the child vs. the child’s parents: acquiescing to avoid conflict is not always the answer.

- i. An IEP team owes one duty to a child with a disability and a different duty to the child’s parents. The team has a substantive obligation to provide the child with FAPE, and it has a procedural obligation to provide the parents an opportunity to be equal participants in the IEP decision-making process. These obligations can come into conflict when parents demand services the other team members believe to be inappropriate for the child.

In that situation, the child’s right to FAPE trumps the parents’ procedural rights and the school district must refuse to provide the service it believes would be inappropriate for the child. The school district’s obligation to provide FAPE cannot be delegated to the parent.

- ii. School district personnel must be instructed and understand that, although they may prefer to avoid conflict, it is inappropriate to provide a student with services simply because the parents are requesting them and the team does not believe the services will harm the student.

Staff members have an obligation to each render their independent professional judgment regarding the student’s needs and how to address them. There are times when the team must, in a respectful manner, tell a parent that it cannot agree with a parent’s suggestions or demands. If there is any question, the team should

agree to provide only those services it reasonably believes the student needs in order to receive an educational benefit. It is not a valid defense to argue that the parent requested the service.

- iii. Sometimes granting a parent's request is the best course for a school district, even when additional services or IEP revisions are not required under the IDEA. To the extent that acquiescing to a parent's request will not violate the student's right to a FAPE or have significant future ramifications for a school district, that course may be the best option for a school district.

B. Participation by Divorced Parents.

1. **Parent rights.** Persons who have the right to make educational decisions for a child are "parents" under the IDEA and are entitled to participate in the IEP process. *See* 34 C.F.R. 300.30(a); 34 C.F.R. 300.321(a)(1).
2. When the parents of a child with a disability are divorced, the parental rights under the IDEA apply to both parents, unless a court order or other state law specifies otherwise. 71 Fed. Reg. 46,568 (2006); *see also Cape Henlopen Sch. Dist.*, 114 LRP 35279 (SEA DE 2014) (because a state court order expressly granted educational decision-making power to the mother only, the school district wasn't required to consider the father's input in the development of student's IEP and placement).

C. Tactics for Conducting an Appropriate and Effective IEP Meeting: Preparation is the Key.

1. **Identify and analyze the parents' issues.** Identify parent issues and concerns as far in advance of the meeting as possible. Talk to the student's regular education teachers, special education service providers, and paraprofessionals in order to determine whether the parents have expressed any concerns and, if so, what those concerns are.
2. **Review facts gathered and applicable legal standards to determine the validity of claims.** Review the facts and the legal standards applicable to the situation in order to determine the validity of the parents' concerns. If you discover that the parents' concerns are warranted, discuss that with the team prior to the hearing and develop a plan as to how you will acknowledge the parents' concerns at the meeting without opening the school district up to potential liability for past services provided. On the other hand, depending on the circumstances, this may be a situation where

the district needs to concede that it erred and agree with the parent on a certain amount of compensatory education for the student.

3. **Educate and prepare the team about relevant law.** If at all possible, identify, discuss, and educate the student’s IEP team about the law relevant to that issue prior to the meeting. A discussion of the issues does not mean that school district staff members should make any final decisions outside the context of the IEP meeting. The parent’s input should be obtained before any final decisions are made.
 - i. If there is a difference of opinion between staff members as to the program components or the nature or quantity of services, identify and attempt to resolve the issues *before* the meeting. Differences of opinion can often be eliminated as the result of a relaxed discussion that occurs before the meeting.
 - ii. Create an expectation that if staff do not voice their opinion within the context of the IEP meeting, they do not have the right to complain outside the meeting. Staff who agree or disagree are expected to voice their opinions so that the team, as a whole, can benefit from input offered by the staff member.
4. **Draft an agenda for the meeting.** The agenda should contain all the main topics for discussion at the meeting. The agenda should also establish time parameters for the discussion of each issue. Send the team members, including the parent, a copy of the agenda along with the Notice of a Team Meeting.
 - i. You want to instill a sense of fairness so that all members of the team, including the parents, feel they have the right to add an item to the agenda, provided that they notify the IEP manager in advance that they want an item placed on the agenda. This is similar to how public bodies, such as school boards, control their agendas.
5. **Maybe develop a “draft” IEP to bring to the meeting or to send to the parents before the meeting.** Any draft should be clearly labeled as such. A “draft” IEP may be sent to the parents, along with an explanatory cover letter, in advance of the meeting. The letter should clearly explain that the IEP is only a draft and will simply be used as the starting point for discussion and preliminary consideration by the team.

D. Conducting the IEP Meeting and Considering Parent Requests.

1. Initial impressions: the little things matter.

- i. Body Language. Your body language speaks volumes and sets the tone for the meeting. Warmly greet the parents and the student as they enter the room.
- ii. Seating Arrangements. Provide the parents with a seat that is close to the door, so the parents do not feel restricted or trapped. Do not leave the least desirable seat for the parents, even if the parents arrive late.
- iii. Parent-Friendly Environment. Offer the parents something to drink (water, coffee); have Kleenex available; and have a notepad and pen available for the parents to use.

2. Interpersonal communications: dealing with difficult personalities.

- i. If a parent criticizes you, the school district, school staff, or the IEP team, insist on specifics.
- ii. Be a broken record. Think through what is best for the child and continually bring the conversation back to that point. Always stay the course. Some things are simply non-negotiable.
- iii. Refuse to be intimidated. Remember that you are a trained professional who understands child behavior. Never use sarcasm when speaking with parents.
- iv. If a parent becomes abusive or threatening, immediately end the conference.
- v. Refuse to acknowledge anonymous complaints or requests.
- vi. Know what you are going to say before the meeting so that you can speak with conviction and confidence.
- vii. Be sure that you can justify your rules and your decisions with ample evidence.
- viii. Try not to take criticism personally. Many times, parents react out of frustration over their experiences with the school district.

3. **Review the agenda and any time parameters.** After welcoming everyone, begin the meeting by reviewing the agenda and any time parameters that have been established for the agenda. Ask if anyone would like to add any topics to the agenda and, if there is not sufficient time to address a new topic, offer to schedule another meeting to consider that topic. Also, ask if a member of the team would be willing to keep track of the time so that the team can be sure to stick to the agenda.
4. **Avoid acronyms and special education jargon.** Whenever possible, use plain language. Do not assume that the parents know what common acronyms mean. (Example: “The ESR reflects that the student meets the eligibility criteria for OHD, based in part on a diagnosis of ADD, and that he also meets the criteria for EBD. Considering the student’s PLEP, the team believes that the IEP, including the BIP, offers the student FAPE in the LRE and that AT is not necessary.”)
5. **Present any “draft” IEP.** When presenting a draft IEP, it is critical that the IEP case manager explain that the “draft,” which should be clearly labeled as such, is merely a starting point for the team’s discussion and its preliminary consideration, and that no decisions will be made without considering input offered by the parents. The IEP manager should also clarify that no decisions have been made. In a situation where a parent and the school district team members have disagreed over certain aspects of a student’s program of education, the “draft” IEP can be used to reflect the areas of agreement and areas that require further discussion.
6. **Do not read documents.** Unless a parent is illiterate, do not read documents (such as evaluation reports) during an IEP meeting. Reading a document verbatim shows a lack of respect for the parent’s time and the time of the other members of the team.
7. **Steer the discussion in a positive direction.** There are several ways in which the IEP manager can steer the team in a positive direction. One way is to begin by summarizing areas of agreement. If the student has made excellent progress, a *brief* review of that progress can also help establish a positive tone.
8. **No blanket statements.** During the IEP meeting, school district staff on the IEP team must not make any blanket statements about the type or quantity of services the school district does or does not provide. This is true regardless of how absurd the request for services may seem.

- i. In many cases, blanket statements violate the law. In other cases, a blanket statement can have the effect of unnecessarily shutting down the discussion and giving the parents the impression that you do not value their opinion or that their request is not even worthy of consideration.
- ii. The following are examples of inappropriate blanket statements:
 - This school district doesn't provide that type of service.
 - We can't provide your child with that quantity of services because, if we did, everyone would want more services.
 - The school district has an unwritten policy limiting the amount of service we can provide to a student (or the amount of money we can spend on a student).
 - That service is too expensive to provide.
 - This is the extended school year program our school district offers to students.
 - I would never recommend an extended school day for any child. A longer day is not appropriate for any student because all children need time to be at home with their families.
 - This school district does not pay for assistive technology devices that students take home with them.

9. **Focus the discussion on the student's individual educational needs.** The basic philosophy of THE IDEA is that each student has individual needs. Therefore, the focus of discussion at an IEP meeting should be on the individual needs of the particular child.

The basic question will typically be the following: does the student need the services the parent is requesting in order to receive FAPE? The IEP team must provide the services if the student needs them in order to make meaningful progress on the goals and objectives in his/her IEP. The school district is not obligated to provide services or assistive technology simply because the student could benefit from such services or assistive technology.

If the team decides to deny a parent's request for additional services at the IEP meeting, the reason for the denial must be based on the individual needs of the child.

- 10. Do not reject any written materials from the parents.** Parents occasionally bring articles, brochures, checklists, books, and other materials to an IEP team meeting for the team's consideration. Do not ridicule such materials or reject them out of hand. This is an opportunity for you to show that you value the parents' input and to thank them for sharing their information. Ask the parents whether you may make a copy of the materials and, if so, whether the parents would like you to distribute a copy to each of the members of the team. Place a copy of any such materials in the student's record.
- 11. Uncertainty about the legal standard or the available options.** Parents occasionally make unexpected requests for the first time at an IEP meeting. If you are going to cite to a legal standard in denying a request for services, be sure you are citing the standard correctly. If you are uncertain about the legal standard, or the range of available options, the team should explain to the parents that the team wants to give thorough consideration to the request and wants to review the range of available options. The IEP manager should also explain that the team is not denying the request at that time but needs more time to explore or consider the request. Offer to meet again or to provide a written response to the parents by a certain date, but no later than 14 calendar days after the parents made the request.
- 12. Consider whether additional evaluation is warranted.** A request for additional services may trigger a need for further evaluation of the student, even though the parent has not specifically asked for an evaluation.
 - i. For example, if a parent requests that the school district provide an electronic assistive technology device, the team may need additional information to determine whether such a device would be appropriate. In this situation, it would be prudent for the team to pursue an assistive technology evaluation, which would include consideration of the device requested by the parent and any alternative devices.
 - ii. Absent a specific request for an evaluation, a school district is not required to conduct an assistive technology evaluation if the student is making progress using another device or method.

However, if the school district denies the parents' request and the case ultimately goes to hearing, the district will have a much stronger position if it has investigated the options through an assistive technology evaluation.

13. Administrators may not usurp the team's authority. The IDEA envisions a delicate balance between an IEP team's broad authority to prescribe special education services for a disabled child and a district administration's ability to establish practical limits and reasonable financial constraints. During IEP meetings and in other communications with potentially litigious parents, administrators must be careful not to give the impression that they have the power to "trump" any decision reached by the team, or that they have the authority to make IEP decisions without input from the team.

- i. Another concern with an administrator usurping the authority of the team is that, if required to testify at a hearing, a team member may say, "I have never been opposed to the services the parents are seeking, but my supervisor/director told me that we could not provide those services." This same concern can apply to a strong-willed IEP manager, school psychologist, etc.
- ii. However, a special education director arguably has the authority to advise the team against making decisions that are inconsistent with existing legal standards and/or ignore equally viable and more cost-efficient placement options.

E. What to Do When the Going Gets Tough.

Disagreements can arise and the tension between parents and school staff can become uncomfortable. No matter what, maintain your composure and professionalism.

- 1. Recognize the importance of the "bottom line" for many parents.** A parent who makes a request for a specific change to a child's IEP may be frustrated with what the parent perceives to be an "unnecessary process" to change the IEP. The parent may perceive that process to be intended to justify an outcome, to delay a decision, or to block the parent's request.
- 2. Focus on the student, not the parent.** The team has a substantive obligation to provide the child with FAPE, and it has a procedural obligation to provide the parents an opportunity to be equal participants in the IEP decision-making process. In short, the student is your client, and

your primary responsibility is to develop an appropriate program of education for the student. A parent who loses his/her cool should not be permitted to change that focus.

3. **The art of redirection.** There are tactful ways to redirect team discussions back to the issue at hand or to a more positive discussion. For example, do not permit the discussion to get mired in a negative battle over what the district will not do. Redirect the conversation to focus on what the district is doing, rather than on what the district will not do.
4. **Address personal attacks and any use of inappropriate language.** Fair warning should be provided to the parents that personal attacks or inappropriate language is not acceptable. If the personal attacks continue, consider tape-recording the remainder of the meeting.
5. **Agree to disagree.** A parent has an equal right to participate in the IEP team process, but a parent does not have the right to require unending discussion of a topic or to prevent the process from going forward. Sometimes, the best that the parties can do is to agree to disagree, at least in the short term.
6. **Take a short break.** A break can be instrumental in allowing cooler, more rational heads to prevail.
7. **Alternative dispute resolution.** If agreement cannot be reached, inform the parents of the right to pursue alternative dispute resolution, such as mediation or a facilitated IEP meeting.
8. **Dealing with advocates.** Advocates often seek to take over and control the discussion at a meeting. Advocates also tend to act in a manner that requires the team to address them and not the parents. Continually redirect the discussion back to the parents, rather than to the advocate.