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Presentation: How to Prevail at a Contested IEP Meeting?

Part 1: What is an Individual Education Program (IEP)?

The goal of Part 1 is to understand the distinct parts of an IEP and the makeup and role of the IEP team.

- A. The IEP document embodies a free and appropriate public education (FAPE) for a particular child.
- B. IEP document consists of five basic parts:
 - a. Present Level of Performance: Evaluation based; what grade level is the child performing at? What you would tell a summer counselor about the status of the child?
FAC 6A-6.03028(3)(h)
 - b. Goals: they should be concrete, measureable, and realistic.
 - c. Program/Placement: form/type of instructional services.
 - d. Least restrictive environment: mainstreaming, inclusion requirement.

- e. Related services: any service a child needs to obtain a FAPE, e.g. speech therapy, counseling, tutoring, etc.

C. IEP Team:

- a. Each member is equal; non-hierarchical decision making.
- b. Membership: parent, school administrator, special education teacher, regular teacher, therapist etc. FAC 6A-6.03028(3)(c)
- c. Educational surrogate: appointed by Foster Care Court or school district. Section 39.0016(1)(c) and Section 39.0016(3)(b), Fla. Stat.; Rule 8.292, Florida Rules of Juvenile Procedure.
- d. Decision-making based on dialogue, personal experience, needs of the particular child, and evaluations.
- e. Implicit pledge of good faith: all members of the IEP team should focus solely on the needs of the child.

D. IEP Timeframe:

- a. At least once a year. FAC 6A-6.03028(3)(j)(1)
- b. IEP may be amended during the school year.
- c. Parents are provided periodic report cards showing the child's progress in meeting his/her Goals. FAC 6A-6.03028(3)(h)(7)

For discussion of related services, see:

DeKalb County School Dist. v. MTV, 164 Fed Appx 900 (2006)
(Related services: vision therapy services).

M.M. ex rel. C.M. v. School Bd of Miami-Dade, 427 F.3d 1085
(11th Cir. 2006) (Related services: no right to select among
alternative related services).

Donald B. v. Board of School, 117 F.3d 1371 (11th Cir. 1997)
(Related services: transportation. Related services must be
necessary to benefit from special education).

Cedar Rapids Community School Dist. v. Garret et al, 527 U.S. 66 (1999) (Related Services: continuous nursing services is a related service for quadriplegic student).

Related service: 20 USC §1401(26)

For discussion of IEP amendments, see:

K.A. ex rel F.A. v. Fulton County School Dist., 741 F3d 1195 (11th Cir. 2013) (amendments within the one year period allowed if the entire IEP team meets or if the parents agree).

For discussion of procedural violations of the IEP process, see:

K.A. ex rel F.A. v. Fulton County School Dist., 741 F3d 1195 (11th Cir. 2013) (violations of any of the procedures of the IDEA is not a per se violation, must show prejudice).

34 CFR 300.505 (a)

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For discussion of LRE, see:

A.K. v. Gwinnett County School District, 556 Fed. Appx. 790 (2014)(LRE and FAPE are linked: whether the IEP was reasonably calculated to enable the child to receive educational benefit in the least restrictive environment).

20 USC 1412 (a)(5)(A)

For discussion of the process of making an IEP, see:

R.L. v. Miami-Dade School Bd., 757 F.3d 1173 (11th Cir. 2014) (school district cannot come into IEP meeting with closed mind;

parent must have a meaningful opportunity to fully participate as equal members of the IEP team).

For discussion of placement, see:

R.L. v. Miami-Dade School Bd., 757 F.3d 1173 (11th Cir. 2014), n.8. (Placement does not mean a particular school, but type of educational setting).

For discussion of transitions assessment, transition services, and transition goals, see:

Jefferson County Bd. of Educ. v. Lolita S., 581 Fed. Appx. 760 (2014) (No later than 16 years old, IEP must provide transition goals, transition assessments, and transition services.)

For discussion of IEP Goals, see:

Jefferson County Bd. of Educ. v. Lolita S., 581 Fed. Appx. 760 (2014) (Goals must address the child's individual needs).

Part 2: How to advocate at an IEP Meeting?

The goal of part 2 is to discuss how to advocate at an IEP Meeting.

- A. Preparation, Preparation, Preparation. The performance at an IEP meeting is like the tip of the iceberg, the bulk of the iceberg is below the water; preparation is the bulk of the iceberg.
- B. The Ask: what are you asking for?
 - a. Don't go to an IEP until you know what you are asking for.
 - b. Are you asking for:
 - i. A new Placement.

- ii. Related Services.
 - 1. Frequency.
 - 2. Group or individual.
 - iii. New Goals.
- C. Draft one page IEP memo:
 - a. Bullet point format.
 - b. Not a legal brief.
 - c. It clearly states your Ask.
 - d. Make twenty copies, hand out at beginning of IEP meeting.
 - e. Make sure to include your name, contact information, and date of the IEP meeting.
- D. IEP meeting advocacy tips:
 - a. Do not go alone. Otherwise you will be surrounded by school employees.
 - b. In most cases, your client, the child, should be present. It will help the team to focus on the concrete child's unique needs.
 - i. Exception: if discussion will be traumatic to the child.
 - c. Sit next to child and parent. Give clients legal pads to write notes.
 - d. Arrive at IEP meeting early and shake hands. The goal is to reach an agreement, not an impasse.
 - e. An advocate is not a potted plant.
 - f. Be professional, polite and considerate, but assertive.
 - g. A combative attitude won't bring about an agreement.
 - h. Ask questions, especially to the teachers.
 - i. Your natural ally is the child's schoolteacher.
 - j. Ask teacher questions that strengthens the argument for your Ask.
 - k. You need to justify everything you ask for: evaluations, evaluations, evaluations !!!

- l. Time-out: IEP is a dynamic process. Go into hallway with client to discuss options or to take a break from unproductive discussions.
- m. IEP document: You should read it slowly and carefully before you sign it.
- n. At the end of IEP meeting, you should sign the IEP, but write that you don't agree that it provides a FAPE, if you are not satisfied with any section of the IEP.
- o. If the school proposes a draft IEP or a new evaluation, need to review before the IEP meeting.
- p. If the first time you are seeing a complex evaluation is at an IEP meeting, ask for a continuance.
- q. Always conclude an IEP meeting with a signed copy in your hand.

For discussion of the IEP meeting process, see:

R.L. v. Miami-Dade School Bd., 757 F.3d 1173 (11th Cir. 2014)
(State cannot come into the IEP meeting with a closed mind: parents must have meaningful opportunity to fully participate as members of the IEP team).