

EFFECTIVE COLLABORATION: HOW TO WORK EFFECTIVELY AS A TEAM

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Predetermination: A Legal Issue

- In 2004, the 6th Circuit held that a school district in Tennessee had violated IDEA by “predetermining” certain issues discussed at an IEP Team meeting.
- Ever since then, parents in litigation with school districts have frequently made the same argument.



Deal v. Hamilton County Board of Education

“The facts of this case strongly suggest that the School System had an unofficial policy of refusing to provide one-on-one ABA programs and that School system personnel thus did not have open minds and were not willing to consider the provision of such a program....The clear implication is that no matter how strong the evidence presented by the Deals the School System still would have refused to provide the services. This is predetermination.” 392 F.3d 840 (6th Cir. 2004).



Three Years Later....

- ❑ Courts recognize that “predetermination” is not the same thing as “preparation.”
- ❑ It is OK to prepare.
- ❑ It is not OK to predetermine.



H.B. v. Las Virgenes USD

- This 9th Circuit case from 2007 provides the best analysis.
- “Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.”



More....

- “...a school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.”



Is This OK?

- *Before the meeting, the school decided that the student should be brought back from a private school to public school.
- *The school had a longstanding plan to move the student back to the district.
- *At the meeting, the district called for a discussion of the transition back to public school.
- *There was no discussion of alternatives.



What the Court Said

“This establishes that the School District desired that the student return to a public school and believed that its proposed placement was appropriate. It does not, however, necessarily establish that the School District was unwilling to consider other placements.”

H.B. v. Las Virgenes USD, 48 IDELR 31 (9th Cir. 2007)



Is the ISD a Human Being?

- Notice that the court speaks of the district as if it were a person.

The School District had a plan...

The School District assumed...

The School District desired....

The School District was unwilling...

The School District must maintain an open mind...and be willing to consider alternatives.



And Then?

- The case went back to the district court, which ruled against the school.
- This was largely based on a single comment by the chair.
- See next slide!!



Evidence of Predetermination

“OK, so what we’ll be doing today is going through the assessment results and then we will talk about those goals and objectives, program services—that discussion—**then we’ll talk about a transition plan.**”

That was enough to convince the court that the district was closed minded.



The Challenge

- The challenge is to run your IEP Team meetings so that a neutral observer could review the records (minutes, other paperwork) and conclude that the district had an open mind.

Examples

- “The Team discussed ___ possible placements and the pros and cons of each.”
- “The chair asked the parents what alternatives they would like the Team to consider.”
- “The Team agreed to _____ in response to parental input.”
- “The parent said _____ and in response, the Team decided _____.”

Facilitated Meetings: The Basics

- It is not mediation.
- The facilitator is not a mediator.
- It provides a focus on PROCESS rather than RESULTS.
- Facilitators can be school employees who are members of the IEP Team.
- In a really tough case, an independent facilitator is advisable.



Focus on Process?

- Have an agenda.
- Have ground rules.
- Stand up!
- Keep the focus on how things are decided—not what is decided.



A Successful Meeting

- Some people measure a meeting by its RESULTS.
- Some people measure a meeting by its PROCESS.
- Some people measure a meeting by its effect on RELATIONSHIPS.



Openers, Narrowers, Closers

- ❑ Discussions begin with an OPENING.
- ❑ Multiple options get NARROWED.
- ❑ We reach CLOSURE.
- ❑ People are naturally inclined to excel in one of these three.



Essential Skills for Facilitator

- ❑ Ability to listen empathetically.
- ❑ Ability to validate viewpoints not agreed with.
- ❑ Ability to keep the group focused on the task.
- ❑ Ability to enforce agreed to ground rules.



Get Visual

- Get vertical.
- Post the agenda for all to see.
- Post the ground rules for all to see.
- Post the options for all to see.
- Post the decisions for all to see.



Transference

- Skills learned by facilitating IEP Team meetings also translate to any kind of meeting in which conflict is likely, such as parent-teacher meetings, faculty meetings, school board meetings, etc.



Who Makes a Good Facilitator?

- You don't have to be the most knowledgeable about IEP Team procedures.
- But you have to know the basics—especially about the non-consensus meeting.
- You have to have excellent communication skills.



The Non-Consensus IEP Team Meeting

- Bringing the meeting to closure without consensus is an essential skill for the IEP Team Leader.
- Remember there are only two parties at the meeting—the school and the parent.
- One proposes; the other responds.



General Rule for Schools

Don't let the meeting conclude in non-consensus unless:

*It is worth fighting over

**The school's position is legally defensible

***School staff is united



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**The information in this handout was created by Walsh, Anderson, Brown, Gallegos and Green, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*

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