

Making Your Point: Communicating Important Special Ed Legal Concerns to Principals

**David B. Hodgins¹
Thompson & Horton, LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77002
(713) 554-6745
dhodgins@thompsonhorton.com**

¹ Special thanks and credit to LRP for providing significant material and/or case cites for this outline.

Making Your Point: Communicating Important Special Ed Legal Concerns to Principals

by

David B. Hodgins
Thompson & Horton, LLP
711 Louisiana, Suite 2100
Houston, Texas 77002
(713) 554-6745
dhodgins@thompsonhorton.com

I. THE CHALLENGE

Ever wish you could waive a magic wand around your school district and suddenly all campus principals became model administrators for students with disabilities — instructional leaders supportive of special education programming, knowledgeable about legal requirements, committed to sound decision-making, and skilled in the intricacies of special education programming and procedures.

For so many in the “real world,” however, too often special educators interact with administrators that seem at time to cause more harm than good, who don’t fully understand, who don’t fully appreciate, or who don’t truly meet their responsibilities to students with disabilities.

Now to be fair, numerous administrators perform their duties admirably. Yet others, even after you have shared your thoughts with them regarding how to more effectively meet their responsibilities, you are reminded of that great classic statement: “What we’ve got here is a failure to communicate.”

What kind of challenge are we dealing with here?

The illustrations might include: failure to provide instructional leadership or support; inappropriate statements to staff and parents; problems with compliance; walking out of IEP team meetings without being excused; unreasonably demanding staff to comply; not following discipline requirements and procedures; being a problem creator vs. a problem-solver, etc. ...

II. CASES DEMONSTRATING THE CHALLENGE

***Watson Chapel Sch. Dist*, 35 IDELR 288, 102 LRP 1622 (SEA AR 2001).**

The student was repeatedly removed from his class by the school's principal for extended periods of time for reasons that included dress code violations. Those removals violated his stay-put BIP, which called for no exclusions from class as punishment. The IHO also found the BIP was entirely inappropriate, as it offered no aids or services to provide social skills training or behavior modeling. Additionally, the child was being disciplined for actions for which nondisabled students were not being punished. Finally, the IHO concluded that the principal's repeated bullying of the student interfered with his education by affecting him emotionally. The district was ordered to provide at least half of one semester of compensatory education and to develop an appropriate BIP. The

principal was ordered to stay away from the student, and the district was directed to administer no punishment of any kind for dress code violations. In addition, the court concluded the district's IEP's failed to adequately provide his present levels of performance and objective criteria against which achievement could be measured. It awarded him compensatory education of 225 minutes direct special education services and a private assessment.

***Sylvester v. Cancienne*, 23 IDELR 610, 23 LRP 3332 (La. Ct. App. 1995).**

An elementary school principal violated standards of professional conduct when she restrained the student to a desk with rope, bound his ankles and wrists with duct tape, and left him in an open doorway in public view for approximately two hours. The school district appropriately sanctioned this conduct by demoting the principal to a position as a teacher.

***USD 259 Wichita Pub. Schs*, 39 IDELR 82, 103 LRP 25318 (SEA KS 2003).**

The parents of a gifted high-schooler rejected the district's IEP and unilaterally placed their son in a private school. While the IHO understood the parents based their decision on the district's established track record of incompetence, hostility and apathy, he concluded the most recent IEP and vast changes in personnel offered the student FAPE. The principal and other key administrators left the school, and the student was assigned to classes with teachers who did not know him. Therefore, the level of hostility the parents claimed existed before would likely be gone and the new personnel would implement the IEP. In addition, the IHO noted the district did not remove the student from the Interbaccalaureate Program despite his cheating on a test.

***Lewis Cent. Sch. Dist.*, 42 IDELR 247 (SEA IA 2005).**

The ALJ determined that the district's failure to address the drug problems of the 17-year-old student with ADD and significant learning disabilities denied him an appropriate educational program. The ALJ explained that his IEP should have been based on a functional behavioral assessment and a BIP to address his drug behaviors, which significantly impacted his educational program and likelihood of disciplinary actions. Under a settlement agreement with the district, if the student engaged in any drug-related behavior, he was subject to expulsion. His IEP did not contain any provisions related to his substance abuse problem. After entering into the settlement agreement, the student failed a drug screen test, and the district conducted a manifestation determination hearing and recommended a 45-day interim alternative homebound placement. The team thereafter determined that a special out-of-district school was an appropriate placement for the student. The parents disagreed and sought due process.

***Lopez v. District of Columbia*, 42 IDELR 231 (D.D.C. 2005).**

The district provided the 13-year-old student with a speech language impairment FAPE through an IEP that proposed placement in a public school with full-time special education services, specialized instruction, psychological services and speech-language services. Despite a finding that the district's IEP was appropriate, the court awarded the parents one year of tuition reimbursement for the parents' private school placement because a series of mistakes made by the district led the parents to believe the placement was publicly funded. However, the court concluded that equitable considerations did not warrant a reimbursement award for the following year, because the IEP proposed for that year was appropriate.

***Deal v. Hamilton County Bd. Of Educ.*, 42 IDELR 109 (6th Cir. 2004).**

The district denied the parents of the student with autism the opportunity to meaningfully participate in the IEP process when it placed their child in a program without considering his individual needs. The court concluded that though the parents were present at the IEP meetings, their involvement was merely a matter of form and after the fact, because the district had, at that point, pre-decided the student's program and services. It concluded the district's predetermination violation caused the student substantive harm and therefore denied him FAPE.

***Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 38 IDELR 91 (9th Cir. 2003).**

After the district rejected a request to continue the child's private placement, the parents sought DP. Before the hearing, the district notified the parents that it planned to convene an IEP meeting. The parents indicated they would be unavailable on the date set by the district and requested a postponement. However, the district held the meeting without the parents, without a representative from the private school and without an independent evaluation. It drafted the IEP relying solely on information gathered from prior meetings with the parents. Upholding a lower court's reimbursement award, the 9th Circuit determined the district's procedural violations denied the child FAPE. Because she had been receiving services at the private school at the time of the meeting, the district should have included one of her teachers. The failure to include the parents was also a procedural flaw, despite the district's argument that the IDEA does not require parents to attend every IEP meeting. In this case, the court noted the parents asked to reschedule the meeting; they did not refuse to attend. By holding the meeting in spite of the postponement request, the district "simply prioritized its representatives' schedules over that of [the] parents."

***Mason City Community Sch. Dist.*, 21 IDELR 248, 21 LRP 2846 (SEA IA 1994).**

A district violated parents' rights to participate in the IEP process by taking an unalterable position regarding the graduation of their daughter who was multiply disabled, and dismissing their valid concerns. "The process of IEP development is one of attempting to arrive at consensus about appropriate special education programs. In order to achieve that result, no one person on an IEP team can or should exercise greater power or voice in the decision making than anyone else on the team. (See 34 C.F.R. Part 300, Appendix C, No. 26, p. 82 (1993).) Yet, that is *not* what happened here. District administrators, admittedly strangers to []'s IEP process, arrived on the scene at a time when the rest of the team was in the process of formulating a significant change in the IEP. The other educators on the team, and []'s parents, were headed toward a determination that [] should not be graduated and, instead, should be provided additional educational programming. That IEP team effort was effectively stopped when the administrators usurped the decision-making process. The two administrators stood firm, without educational justification, backed only by their interpretation of District policy saying that it required that [] graduate and effectively end the District's responsibility for her education.

III. THE OPPORTUNITY

As a Special Education Leader, you have the unique opportunity and responsibility to change the environment; to alter the negative paradigm; and to educate and persuade on behalf of your staff and all of the students with disabilities that you serve.

IV. THE HOW

1. **Build a Relationship with your Principals:** you will be much more successful if you build a professional relationship with your principals; spend time with them; meet with each of them twice a year just because; go by and check on their campus; invite them to trainings outside the district; ask their advice; create teaming opportunities. Remember: united we stand — divided we fall.
2. **Earn Trust and Respect:** you must work hard every day in your job and earn the respect and trust of your administrative colleagues; model strong leadership; be visible on their campuses; attend principal meetings; tell the truth even when it is difficult; follow through on your commitments; treat everyone fairly.
3. **Train and Teach:** you must consistently train; provide articles and information; model good programming and decision-making; teach them the law, the regulations, the rules, and the best practices; teach them not to make a decision that is educationally inappropriate even when requested by a parent — that the legal duty is to the student. Educate them regarding their role in the IEP team; the authority of the IEP team; the legal procedures of the IEP team process; and the discipline procedures for students with disabilities.
4. **Empathize and Encourage:** seek first to understand and then to be understood; understand and appreciate the great challenges principals face with pressures of accountability, time and school safety — take a walk in their shoes (boots); let them vent and don't take it personally; encourage principals to do the right thing.
5. **Persuade:** fully describe and help them understand the ramifications of critical decisions; in this context, a little fear can go along way; remind them how easily a federal due process hearing can be filed; walk them through the emotional and time consuming toll and expense of a contested due process hearing; describe the potential of being in the board room describing a losing case and all of the related ramifications.
6. **Be Service-Oriented and Solution-Focused:** if you are asked to provide assistance, you and your staff must respond timely and effectively; continue to focus on the solution and not the problem; be creative; accomplish the needed objectives.
7. **Celebrate and Congratulate:** kind note; recognition in a meeting; give an award; send a letter to the Superintendent; thank them for a job well done; praise them for student success.

V. THE BENEFIT

1. Improved Administrative Relationship
2. Better Legal Compliance and Less Litigation
3. More Effective Educational Programming for Students with Disabilities
4. World Peace