

TOP 10 SPECIAL EDUCATION ADVOCACY TIPS

DYSLEXIA CONNECTION OF EVANSTON
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SPEAKER BACKGROUND

- DePaul University College of Law, J.D.
- University of Missouri at Columbia, B.S. Education
- Adjunct Professor, Psychiatry and the Law, UIC/Rush Medical Schools
- Hansen and Cleary, LLC, Partner
- Whitted and Cleary, LLC, Partner
- Chicago Public Schools, Special Education Teacher
- My husband is the ED of Hyde Park Day Schools
- 2 children in public school, 1 with an IEP



TIP #1

Know the differences between the disability laws when asserting your child's rights

Do you know if your child's needs fall under...

- *Section 504 of the Rehabilitation Act of 1973? ("Section 504")*
- *Individuals with Disabilities Education Improvement Act? ("IDEA")*
- *Title II of the Americans with Disabilities Act? ("ADA")*



SECTION 504 PLANS

Section 504 eligibility is based on a three-pronged evaluation:

1. Does the student have a mental or physical impairment?
2. Is the student substantially limited?
3. Is the student substantially limited in one or more major life activities?



SECTION 504 PLANS vs. IEPs

- Section 504 Plans tend to be much less formal than IEPs
- Generally, direct services are not provided under Section 504, just modifications/accommodations (related services can be provided, but not LBS services)
- The IDEA only applies to students (ages 3 through 21) who require special education because they have one of the specified types of disabilities (*i.e.*, qualify under 1 of the 13 eligibility categories)



6 MAIN PRINCIPLES OF IDEA

1. FAPE - Every child is entitled to a free and appropriate public education (FAPE);
2. Evaluation - When it is believed that a student between the ages of 3 and 21 may have a disability that has an adverse impact on the student's learning or behavior, the student is entitled to an evaluation in all areas related to the suspected disability;
3. IEP – The creation of an Individualized Education Program (IEP). The purpose of the IEP to establish measurable annual goals for the child and to state the special education and related services and supplementary aids and services that the school district will provide to, or on behalf of, the child;
4. LRE - The education and services for children with disabilities must be provided in the least restrictive environment for that child;
5. Parental Participation - Input of the child and their parents must be taken into account in the education process;
6. Procedural Safeguards/Dispute Resolution – The IDEA contains detailed procedural safeguards that must be provided to parents, including that when a parent feels that an IEP is inappropriate for their child, they have the right under IDEA to challenge the school team’s decisions.



Tip #2

Always Be Prepared

Educate Yourself - Learn about parental rights/best practices:

- ❖ U.S. Department of Education website
- ❖ Illinois State Board of Education website (ISBE)
- ❖ Wrightslaw
- ❖ Council of Parent attorneys and Advocates (COPAA)
- ❖ Special education conferences
- ❖ School district/local special education parent groups
- ❖ Facebook special education parent groups



BE PREPARED: REVIEW YOUR CHILD'S SCHOOL FILE

- ❖ Maintain your child's educational records
- ❖ Request the school file under the Illinois School Student Records Act (ISSRA) 105 ILCS 10/5(c):
 - ❖ *(c) A parent's or student's request to inspect and copy records, or to allow a specifically designated representative to inspect and copy records, must be granted within a reasonable time, and in no case later than 10 business days after the date of receipt of such request by the official records custodian.*



BE PREPARED: REVIEW THE DRAFT EVALUATIONS/IEP PAPERWORK FROM THE SCHOOL DISTRICT BEFORE THE MEETING

Request IEP documents in advance of meetings.

105 ILCS 5/14-8.02f(c)

- ❖ Requires that no later than *three school days* prior to an eligibility meeting or IEP meeting that the school must provide the parents with copies of *all written material* that will be considered by the IEP team at the meeting so that the parent or guardian may participate in the meeting as a fully-informed team member



BE PREPARED: CONSIDER REVIEWING RELATED SERVICE LOGS

Request related service logs.
105 ILCS 5/14-8.02f(d)

- ❖ Requires related service logs that record the type of related services administered under the child's IEP and the minutes of each type of related service that has been administered be available to the child's parent or guardian at the annual review of the child's IEP and must also provide a copy of the related service logs at any time upon request of the child's parent or guardian



Tip #3

Understand and Advocate During Domain Meetings

- ❖ Domain meetings are held prior to conducting initial evaluations and three-year reevaluations
- ❖ IEP team determines relevant domains for CSE
- ❖ All meetings must be scheduled at a mutually convenient time for parents and school (this applies to any IEP meetings as well)
- ❖ 8 domain categories (health, vision, hearing, social emotional status, general intelligence, academic performance, communication status, motor abilities)
- ❖ At the conclusion of the meeting a parent must give written consent to start the CSE
- ❖ The date parents sign consent starts the 60-school day timeline for the school district to complete the CSE



Parents May Provide Input to the Domain Review Process

Parents, and/or their private providers may offer suggestions for the CSE evaluation components:

- ✓ Often school district teams draft the domain paperwork in advance and present it to parents as a “done deal”
- ✓ The document may be amended
- ✓ The document may be taken home and reviewed with private providers or researched



Parents May Provide Input to the Domain Review Process

- Ask about including certain types of testing
- Also ask why the school team is suggesting certain evaluations
- Ask that official notes be taken at the domain meeting
- Take notes/have a support person take notes



Tip #4

Understand and Advocate During Eligibility Meetings

- ✓ A team meeting is held to determine eligibility (adverse impact)
- ✓ The eligibility meeting is not really an IEP meeting
- ✓ If a student is determined eligible, an IEP is written for the child
- ✓ If the child is not eligible, parents may file for a due process hearing request to object



Illinois Eligibility Categories – 23 Ill. Admin. Code 226.75

Disability: IDEA identifies 13 disabilities as the basis for students' eligibility for special education and related services:

- 1) Autism
- 2) Deaf-Blindness
- 3) Deafness
- 4) Emotional Disability,
- 5) Hearing Impairment
- 6) Intellectual Disability
- 7) Multiple Disabilities
- 8) Orthopedic Impairment
- 9) Other Health Impairment
- 10) Specific Learning Disability
- 11) Speech or Language Impairment
- 12) Traumatic Brain Injury
- 13) Visual Impairment



USE PRIVATE PROVIDERS TO ASSIST WITH ELIGIBILITY DETERMINATIONS

- School districts must “consider” independent evaluations provided by outside private providers. 23 IAC 226.180(d)
- Ask your private evaluator to draft evaluation recommendations to track with the Illinois eligibility criteria



A NOTE REGARDING THE USE OF PRIVATE PROVIDERS

- We suggest parents only use private providers who will accompany them to domain/eligibility/IEP meetings, provide written letters of support, speak with school staff, and possibly testify at due process hearings
- This applies to eligibility determinations as well as IEP meetings (initial meetings and annual reviews)



TIP #5

Avoid Feeling So Overwhelmed or Intimidated That You Don't Ask Questions

When is the right time to ask? *Any time you have a question. For example:*

- When you don't know what an acronym means
- When all the school district team members are following along on their computers and you do not see their screens

In addition – ask questions:

- When you first have a concern
- Before a meeting with the school
- During a meeting with the school
- After a meeting with the school



Remember: Meaningful Parental Participation is Required under the IDEA

One of IDEA's foundational principles is the right of parents to participate in educational decision-making regarding their child with a disability. The law is very specific about what school systems must do to ensure that parents have the opportunity to participate, if they so choose. Just a few examples:

- ✓ Parents have the right to participate in meetings related to the evaluation, identification, and educational placement of their child. 34 CFR §300.501(b)
- ✓ Parents have the right to participate in meetings related to the provision of a free appropriate public education (FAPE) to their child. 34 CFR §300.501(b)
- ✓ Parents are entitled to be members of any group that decides whether their child is a “child with a disability” and meets eligibility criteria for special education and related services. 34 CFR §300.306(a)(1)
- ✓ Parents are entitled to be members of the team that develops, reviews, and revises the individualized education program (IEP) for their child. 34 CFR §300.321(a)(1)



TIP #6

LEARN WHAT “FAPE” MEANS

- The school district must legally provide an eligible special education student with a Free and Appropriate Public Education (FAPE)
- A FAPE must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school
- A FAPE is provided through the IEP document – *the entire document* - must be reasonably calculated to provide a FAPE



“APPROPRIATE”

- THE ROWLEY CASE – ESTABLISHING EDUCATIONAL BENEFIT
- Standard for Special Education Services – “Some educational benefit”
- Not the MAXIMUM, not the bare minimum
- Not a “Cadillac,” just a serviceable “Chevy.”

Two-Prong Legal Analysis

1. PROCEDURAL: Has the school district complied with the procedural requirements of the IDEA?
2. SUBSTANTIVE: Is the IEP “reasonably calculated” to confer educational benefit?



Andrew F. v. Douglas County School District Re-1, 137 S. Ct. 988, (U.S. S. Ct. 2017)

According to the Supreme Court, “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make *progress appropriate* in light of the child’s circumstances.” (Emphasis added)

“APPROPRIATE PROGRESS” – The Court declined to define it – case-by-case basis – adequacy of the IEP based on each child’s unique needs

The Court stated, “The ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education *requires a prospective judgment by school officials*. The Act [IDEA] contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians.” (Emphasis added)



What is the 7th Circuit's FAPE formulation?

Educational benefit with “progress.”

In *M.B. v. Hamilton Southeastern Schs.*, 668 F.3d 851 (7th Cir. 2011), the 7th Circuit stated, “We reiterate that an IEP is reasonably calculated to enable the child to receive an educational benefit ‘when it is likely to produce progress, not regression or trivial educational advancement’ . . . To prevail on their substantive claim, then, M.B.’s parents must convince this court that the hearing officer, the Board and the district court clearly erred in determining that M.B. was making progress under his IEP.”



TIP #7

Consider Conducting an Observation of Your Child

- You can learn a lot by observing your child at school
- Your child's evaluator or other service provider can also observe
- Illinois requires that parents be allowed to observe within the parameters of the District's policy which may place reasonable limits on the observation



105 ILCS 5/14-8.02 (g-5) (Amended by P.A. 96-657)

(1) A parent must be afforded reasonable access of sufficient duration and scope for the purpose of observing his or her child in the child's current educational placement, services, or program or for the purpose of visiting an educational placement or program proposed for the child.

(2) An independent educational evaluator or a qualified professional retained by or on behalf of a parent or child must be afforded reasonable access of sufficient duration and scope for the purpose of conducting an evaluation of the child.



TIP #8

KNOW HOW TO REVIEW YOUR CHILD'S PROGRESS

- ❖ Goals must be measurable
- ❖ Progress updates
- ❖ Annual reviews
- ❖ Reevaluations
- ❖ Drafts of reports/goals
- ❖ School Observation



THE IEP

An IEP IS:

1. A management document that sets forth what resources the school district will make available to the student;
2. A communication document, which clarifies what the student is entitled to based on the exceptional needs identified in the case study evaluation;
3. An accountability document, which specifies the individualized goals, benchmarks or short-term objectives, objective measures of progress toward goal attainment, and the schedule for measuring and reporting goal attainment progress.
4. A record of a meeting.



IEP goal writing questions

- What are the student's strengths?
- What are the identified student needs?
- What are the Illinois Learning Standards (or your State standards) that apply to the goal?
- What is the student's present level of academic achievement and functional performance?
- What is the goal statement?
- What is the evaluation criteria for the goal?
- What are the evaluation tools for the goal?
- What are the benchmarks or steps toward goal completion?
- How do we know when the benchmarks have been met?



GOAL SETTING

S

SPECIFIC

M

MEASURABLE

A

ATTAINABLE

R

RELEVANT

T

TIME-BOUND

Know how the school will measure progress on the goals

- Will the goal lead to measurable progress?
- Do you know how to measure progress yourself?



Present Levels of Performance

- ❖ All IEP goals and benchmarks or short-term objectives must be predicated on Present Levels of Performance (PLOP or PLEP).
- ❖ If an IEP goal is not predicated on accurate PLOP data, the IEP goal is flawed, as is any evaluation that flows from the goal.

Present Levels of Performance

- Does the PLOP statement include the student's strengths (what he/she is able to do)?
- Does the PLOP statement indicate what the student is unable to do and how this impacts his/her performance in the general education curriculum?
- Does the PLOP statement include current, measurable data that will correspond with the IEP goals?

TIP #9

KNOW WHEN YOUR CONSENT IS REQUIRED

Parental consent required:

- Initial case study evaluation
- Any subsequent evaluations
- Initial IEP placement (district may not file hearing to override)

Parental consent not required:

- All placements after the initial placement
- The remedies to a disputed change in placement is to file for a due process hearing (or mediation if school agrees) and invoke “stay-put” or to revoke consent for special education.



The Importance of “Stay-Put”

- ✓ Under the IDEA, a change to the student’s educational placement, except for an initial placement, will automatically go into effect in 10 school days unless a parent invokes the “stay-put” provision through filing for an impartial due process hearing, or a mediation.
- ✓ The stay-put placement shall be the student’s present educational placement and the student must continue, if applicable, in his or her present eligibility status and be provided with the special education and related services in place at the time the dispute arose.



TIP #10

KNOW YOUR DISPUTE RESOLUTION OPTIONS

- State sponsored mediation
- State complaint process
- Impartial due process hearing process



STATE SPONSORED MEDIATION

- The Illinois State Board of Education (ISBE) implements the special education mediation process in Illinois
- Mediation may be used before or after a hearing request has been filed
- Attorneys may represent parties at mediation
- At mediation, the parties sign an understanding that anything said at mediation may not be used in a hearing
- Agreements developed at mediation are legally binding



STATE SPECIAL EDUCATION COMPLAINT

- ISBE also implements the state complaint procedure. No cost. ISBE investigates
- Violations need to be procedural – ISBE will not determine FAPE violations
- 1 year SOL
- 60 days for investigation and written decision



IMPARTIAL DUE PROCESS HEARING

- The primary mechanism to remedy FAPE and procedural violations under the IDEA
- Either a parent or school district may file a due process complaint concerning issues with identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the child. 34 CFR §300.507.
- Congress wanted knowledgeable triers of fact
- ISBE establishes procedures and hearing officers. 2-year SOL
- Parents may use attorneys or appear *pro se*
- Appeal on the hearing record to state or federal court

