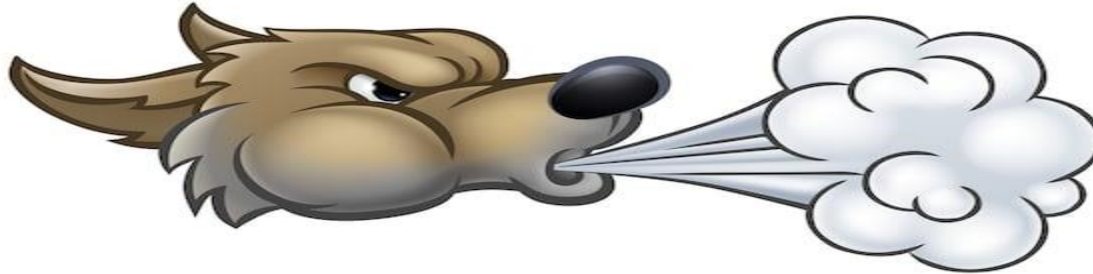


The Wolf at the Door: Attorneys at TEAM Meetings



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Who Can Attend Team Meetings

34 CFR 300.321

- **(a)General.** The [public agency](#) must ensure that the IEP Team for each [child with a disability includes](#) -
- **(1)** The [parents](#) of the child;
- **(2)** Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- **(3)** Not less than one [special education](#) teacher of the child, or where appropriate, not less than one [special education](#) provider of the child;
- **(4)** A representative of the [public agency](#) who -
- **(i)** Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of [children](#) with disabilities;
- **(ii)** Is knowledgeable about the general education curriculum; and
- **(iii)** Is knowledgeable about the availability of resources of the [public agency](#).
- **(5)** An individual who can interpret the instructional implications of [evaluation](#) results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- **(6)** At the discretion of the [parent](#) or the agency, other individuals who have knowledge or special expertise regarding the child, including [related services](#) personnel as appropriate; and
- **(7)** Whenever appropriate, the [child with a disability](#).

knowledge and special expertise

- ***Determination of knowledge and special expertise.*** The [determination](#) of the knowledge or special expertise of any individual described in [paragraph \(a\)\(6\)](#) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

Early BSEA Decisions on Attorneys at Team Meetings

- In Re Holyoke, 3 MSER 167 (1997) (Oliver); school district's action in cancelling Team meeting until District's attorney could attend did not violate state regulations;
- In Re Arlington, 4 MSER 165 (1998) (MacAvoy); same

OSERS Letter to Andel, 2/17/16

- Under 34 CFR §300.322(b), the public agency must inform parents in advance of the IEP meeting, including the purpose, time, and location of the meeting and who will be in attendance. There is no similar requirement in the IDEA for the parent to inform the public agency, in advance, if he or she intends to be accompanied by an individual with knowledge or special expertise regarding the child, including an attorney.

Andel: no postponement

- We believe that in the spirit of cooperation and working together as partners in the child's education, a parent should provide advance notice to the public agency if he or she intends to bring an attorney to the IEP meeting. However, there is nothing in the IDEA or its implementing regulations that would permit the public agency to conduct the IEP meeting on the condition that the parent's attorney not participate, and to do so would interfere with the parent's right under 34 CFR §§300.321(a) and 300.322(a).

Andel: Ok to Ask to Postpone

- It would be permissible for the public agency to reschedule the meeting to another date and time if the parent agrees so long as the postponement does not result in a delay or denial of a free appropriate public education to the child.

The Importance of Parental Involvement

- “By changing the language [of the provision relating to individualized educational programs] **to emphasize the process of parent and child involvement** and to provide a written record of reasonable expectations, **the Committee intends to clarify that such individualized planning conferences are a way to provide parent involvement and protection to assure that appropriate services are provided to a handicapped child.**” S.Rep., at 11–12, U.S.Code Cong. & Admin.News 1975, p. 1435.

IDEA requirement

- The IDEA provides that parents of a child with a disability shall have the opportunity **“to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education.”** 20 U.S.C. § 1415(b)(1).

Parents are Partners

The IEP requirements under IDEA emphasize the importance of working cooperatively as a team. The law expects school districts to bring together parents, students, general educators and special educators to make important educational decisions for students with disabilities. With the combined knowledge and resources of these individuals, students will be assured greater support and subsequent success. (from MADOE , *IEP Process Guide*)

What Courts Say about Parental Involvement

- Participation in the decision-making process must be **meaningful, not “mere form.”** Deal v. Hamilton Cnty. Bd. of Educ., 392 F.3d 840, 858 (6th Cir.2004). School officials must have an open mind and be willing to listen and consider the parents' input. Id. at 857–58. **Meaningful participation cannot be assumed just because the parents were present and allowed to speak.** Id. at 858.

Attorneys allowed to at TEAM meetings

- OSEP Policy Letter 22 IDELR 734 (1993) :
Therefore the public agency can exercise its discretion to include “other individuals” in IEP meetings, including the school district’s attorney. . . . nothing in the regulations prohibits the public agency from including attorneys in the IEP meeting *even if the parent is not represented by counsel and/or has not requested mediation or a due process hearing*

But “discouraged”

- **OSEP discourages public agencies from bringing their attorneys to IEP meetings.** The participation of a school district’s attorney could potentially create an adversarial atmosphere at the meeting which could interfere with the developments of the child’s IEP in accordance with the requirements of Part B.

See Also 69 Fed. Reg. 12478

- Question 29 to Attachment A to the IDEA '97 regulations at 34 C.F.R. Part 300:
- The presence of an attorney could contribute to a potentially adversarial atmosphere at the meeting. The same is true with regard to the presence of an attorney accompanying the parents at the IEP meeting. Even if the attorney possessed knowledge or special expertise regarding the child (§ 300.344(a)(6)), an attorney's presence would have the potential for creating an adversarial atmosphere that would not necessarily be in the best interests of the child.
- Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged.

And see also

- Letter to Clinton, 7/23/2001
- Complaint that local school district is “inappropriately inviting the district’s attorney to IEP meetings”
- Cites Question 29

General Conflict-Resolution Guidelines for IEP Meetings

1. Be Respectful
2. Be Empathetic
3. Be Prepared
4. Be willing to admit past mistakes
5. Always treat each other like experts
6. Accept that there will be differences of opinion
7. Remember that the meeting isn't about you
8. Be willing to compromise
9. Know when to table the discussion

When Conflicting Perceptions and Opinions Cause Disagreements

- Allow each person to express opinions without interruption
- Ask questions to clarify points
- Be mindful of your body language and comments.
- Ask for current data such as test scores, observations and other resources
- Consider information from all resources including professionals working with the student.

If there is no communication, there is no conflict resolution

- Be a good listener. Ask questions for clarification and reflect the message back to the speaker;
- Speak clearly and efficiently. Ask questions to ensure your points are understood. Try not to wander off topic.
- Be open to other opinions on what may help. Be willing to try other options when possible.

Dealing with Discrepancies

- Study by Jeannie Lake in Massachusetts (see handout)
- 90% of participants cited a discrepancy between their own views of their child's disability and how the school viewed it;
- Participants also complained that the school failed to share information with them, and as a result lost faith and trust

Suggestions for Special Education Directors

- <https://www.edutopia.org/special-education-conflict-resolution-parents>
- Finding common threads and developing appropriate services;
- Providing families with resources: training, peer support;

Actions Speak Louder than Words

- Article by Tracy Gershwin Mueller and Shawn Piantoni in the Journal of Special Education Apprenticeship, Vol. 2. No. 2(Dec. 2013):
- Interview Study of Special Education Directors in a Western State

Effective Strategies Identified by Mueller and Piantoni

- establish communication,
- provide parent support,
- level the playing field,
- intervene at the lowest level possible,
- maintain the focus on the child,
- find a middle ground,
- understand perspectives.

The Rule of Reason

BSEA Hearing Officer William Crane:

the most reliable indicator of success at hearing is whether the hearing officer or judge believes that the actions of the party (school district or parents) were **reasonable** under the circumstances of the particular dispute.

BE Reasonable

See:

C.G. ex rel. A.S. v. Five Town Community School District, 513 F.3d 279 (1st Cir. 2008):

School districts' actions were reasonable and parent's frustration of the IEP process unreasonable

Team Meetings are Negotiation

- “Like it are not, You are a negotiator.” Fisher, Ury, Patton



Getting to Yes Rules of Effective Negotiation

- Separate the people from the problem
- Focus on interests, not positions
- Invent multiple options looking for mutual gains before deciding what to do
- Insist that the result be based on some objective standard

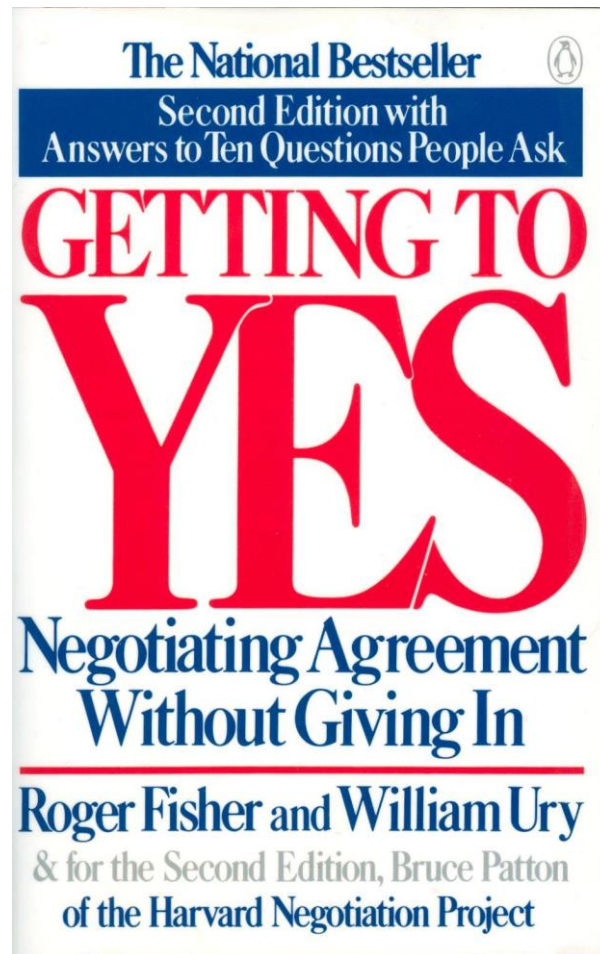
Separate the people from the problem

- Emotions become entangled with the objective merits of the problem
- Egos become identified with positions
- Identify the common interest

Focus on interests, not positions

- All parties have a common interest in seeing student achieve;
- Schools may have a variety of not readily apparent interests;
- Recognize standard school interests in “not rocking the boat” while advocating to rock;
- Understand your interests

With apologies to



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