

# Staying Student Focused When Resolving Disagreements

Selene Almazan, Esq.  
June 2014, Wyoming

# SELENE A. ALMAZAN, Esq.

*Selene is the Director of Advocacy Services and Co-Executive Director of the Maryland Coalition for Inclusive Education (MCIE), a non-profit organization founded in 1989. For the last 20 years, Selene has represented parents in special education matters with a primary focus on least restrictive environment issues at the*

*MCIE. As the Director of Advocacy Services, she directs the only legal services project devoted solely to the issue of least restrictive environment in the country. The Advocacy Project has represented over 3000 individual students in the last 20 years throughout the state of Maryland. Selene represents families at IEP team meetings, state complaint proceedings, mediations, due process hearings, suspension/expulsion proceedings and federal court proceedings, including matters involving violations of the Americans with Disabilities Act, and the Rehabilitation Act of 1973. Selene is a former Supervising Attorney for the Legal Aid Bureau of Maryland where she represented children in the foster care system, including representation in special education matters. She has extensive experience training families, teachers, school administrators, attorneys and advocates on legal issues related to special education law as well as disability discrimination issues. Selene is a member of COPAA and TASH. She was Chair of the Board of Directors for COPAA for 2006-2007 and is currently on the COPAA Board and Co-Chair of the COPAA Amicus and Conference Committees.*



# Who are You?

---

# Individuals with Disabilities Education Act (IDEA)

---

- 20 U.S.C. 1400 et seq.
- 34 C.F.R. Part 300

# Possible Areas of Disputes

# Individualized Determination

- Made by a team that includes parents
- Based on IEP, **NOT** on
  - *Category or significance of disability*
  - *Availability of services*
  - *Configuration of service delivery system*
  - *Availability of space*
  - *Administrative convenience*

# Parental Rights

## Substantive Due Process Rights

---

- Right to Free Appropriate Public Education (FAPE)
- Right to an Education in the Least Restrictive Environment

# Free and Appropriate Public Education (FAPE) 34 C.F.R. §300.101

- Special Education and Related Services
- Provided at public expense
- To meet the unique needs of student so that student can:
  - Benefit from education
  - Progress in general curriculum



# Program vs. Service

---

- Look at definition of Specially Designed Instruction

# Special Education

## 34 C.F.R. §300.39(a)

---

➤ “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability”

# Making a Placement Decision in the LRE

---

- Substantive due process right
- Procedural due process right
- Required since Act's inception

# What to Do to Stay Student Focused?

# Negotiations and Discussions

---

- focused on the student rather than the “position” of each party have value in special education advocacy.
- From a parents’ perspective it may be important to maintain a good relationship with a school team and a school district.

# Negotiations and Discussions

---

- Some benefits are:
- The parties become partners rather than adversaries and work towards a common solution.
- The parties develop commonalities and work toward specific goals.  
The ability to set parameters (fair boundaries) which all can live with.

---

The IEP is the heart of the IDEA entitlement. It encompasses the special education and related services that a local school system must provide to a student with a disability so that the student can:

- benefit from his or her education,
- progress in the general curriculum, and
- have the opportunity to be educated alongside students without disabilities.

# Bargaining at the IEP table

---

If explicit demands are made in the beginning, both sides become personally committed to their positions and will defend them with unnecessary and counterproductive force.

Such negotiating styles can make enemies of people if one side feels it has lost at the expense of the other party.



# IEP cont'd

---

Egos become intertwined with issues, and people start feeling the need to save face.

Large amounts of time can be wasted during the process of haggling towards a middle ground.

# IEP cont'd

---

Such negotiating styles can make enemies of people if one side feels it has lost at the expense of the other party.

# Shared Interests

Holding to positions can divide the parties into potentially intractable causes. Interests, on the other hand, can be shared or at least complementary. Finding legitimate interests in common for each side will tend to unite the parties.

# Parent perspective

---

- Focus of the child's needs and not the emotions
- Know the IDEA and obligations
- Allow each person to express an opinion without interrupting (harder than it seems)
- Ask for current data (test scores, behavior data, work samples)

# Flexibility: Position v. Interest

# Position v. Interest

- A **position** is one way to solve a problem and has a narrow focus
- An **interest** is broadly defined need, can be met in several ways.

# IEP Facilitation

# IEP facilitation

---

Not mentioned in the IDEA

An informal way of resolving disputes



# IEP facilitation

---

Impartial facilitator

Helps with communication among team members

Helps IEP team stay on task

# Benefits

- Can promote communication
- Can encourage full participation of team members
- Can clarify points of agreement and disagreement
- When disagreements arise can help encourage team members to identify new options
- Importantly, keeps the focus on the child

[www.directionservice.org/cadre](http://www.directionservice.org/cadre)

# Facilitated IEP meetings

- Same as an IEP meeting: all legal requirements are expected to be enforced
- Notice
- Mutually convenient location and time
- Prior Written Notice (PWN)

# Preparation for Families

- Prepare a written list of issues to discuss as well as questions;
- Where is my child now in their educational performance?
- Where do I want them to be in a year and how will we measure that progress?
- How can the team help my child meet these expectations?

# Resource

- CADRE (2014), *In the Best Interest of the Child: Individualized Education Program (IEP) Meetings When Parents Are In Conflict*, Eugene, OR: Feinberg, Moses, Engiles, Whitehorne and Peter

# Hostility Cases:

---

*Bd. Of Edu. Of Comm. Cons. Sch. Dist. 21 v. Illinois St. Bd. Of Education*, 938 F.2d 712 (7<sup>th</sup> Cir. 1991), cert. denied, 112 S.Ct. 957 (1992): Parents' criticized and undermined the child's placement to the point of "poisoning" the child's mind. The decision is a relatively narrow one that did not grant parental hostility as an absolute veto.

## *Dist. 21*

- The majority ruled that parental hostility to an IEP may be considered as one factor in determining the substantive appropriateness of a program or placement. The Court noted that it is the child's interest that is of utmost importance, not the parents' or the district's. It is up to the trier of fact to determine credibility issues as to whether the parents have so poisoned the child against the placement that there is little hope that the student can receive educational benefit.



# *Roy A. et al. v. Valaparaíso Community Schools (Indiana)*

- Parent argued that they were “hostile” to an IEP and its contents as well as to the disability label.
- Court held that Hearing Officer made appropriate findings of credibility when determining that parents had participated in the IEP process and agreed with some provisions.
- Court also reasoned that the crux of the disagreement was the disability label and not the placement; therefore there was no “poison”.

951 F.Supp. 1370 (1997)

# *Greenbush Sch. District v. Mr. and Mrs. K and Wayne Mowatt (Maine)*

- Long standing animosity between school and parents.
- Infected the student and his ability to receive educational benefit due to allegations of harassment by staff at the school, administrators and even the bus driver.
- The District Court found the students testimony had not been sufficient weight by the Hearing Officer.
- The District Court found that the student could no longer receive any education benefit from the environment.
- 949 F. Supp. 934 (1996)

# *Jefferson County Sch. Dist. V. Elizabeth E. (Colorado)*

- Residential treatment case/Reimbursement
- Citing the district for failing to work with the parents (dis-enrolling the student and claiming the school district no longer had obligations towards student's education) Court declined to reduce or deny reimbursement based on Parent's alleged unreasonableness.
- 798 F. Supp. 2d 1177 (2011)

# *Anchorage Sch. Dist. v. M.P.*

- The ASD failed to timely update **M.P.**'s 2006 IEP. When **M.P.**'s parents responded to the draft IEP proposed by the ASD in February 2008, the **school district** unilaterally terminated all efforts to revise the outdated and obsolete IEP for **M.P.**'s third grade year. Therefore, the ASD's refusal to cooperate in updating the IEP necessarily contributed to the parents' need to secure private tutoring services for their son.

# *Anchorage Sch. Dist. v. M.P.*

- As we have previously stated, we are sympathetic to the difficulties posed by the obviously strained relationship between the ASD and **M.P.**'s parents, but this circumstance does not excuse the ASD from compliance with the IDEA. To conclude otherwise would subvert the purposes of the IDEA and sanction a **school district's** unilateral decision to abandon its statutorily required responsibility to the detriment of its students.

# *Anchorage Sch. Dist. v. M.P.*

- “**M.P.**, through his parents, appeals the **district** court's ruling that the **Anchorage School District** ("ASD") did not deny **M.P.** a free and appropriate public education ("FAPE") because the failure to develop an updated Individualized Education Program ("IEP") was mostly attributable to his "parents' litigious approach."

## *M.P. cont'd*

- The Individuals with Disabilities Education Act ("IDEA") mandates that public educational agencies review and revise annually an eligible child's IEP. 20 U.S.C. § 1414(d)(2)(A), (4)(A); 34 C.F.R. §§ 300.323(a), 300.324(b)(1). Neither the IDEA nor its implementing regulations condition this — or any other — duty expressly imposed on a state or local educational agency upon parental cooperation or acquiescence in the agency's preferred course of action. Penalizing **M.P.**'s parents — and consequently **M.P.** — for exercising the very rights conferred by the IDEA undermines the statute's fundamental purposes.

# Citation

- **689 F.3d 1047 (9<sup>th</sup> Cir. 2012)**



# Administrative Application

# Administrative Decisions

## Pennsylvania

- Conrad Weiser Sch. Dist.  
21 IDELR 759 (1994)

Parents alleged “poisoned waters” Hearing Officer did not conclude that the District acted with hostility or specific intent

Held: for the district.

## Vermont

- In Re Nicholas W.  
22 IDELR 1153 (1995)

District alleged that parent had “hostility” and thus made a unilateral placement.

Held: for the parent

# *Bd. Of Ed. Of Northfield v. Roy H., et.al.*

School district alleged that parents sabotaged the placement and requested that parents no longer be able to participate in the educational matters.

Held that “Congress placed such extreme importance on the involvement of the parents in the education of their disabled child, plaintiff’s request to enjoin Lisa’s parents from any further involvement in her education is inappropriate.”

21 IDELR 1173 (1995)

# St Mary's Sch. Dist.

- 20 IDELR 46 (1993)  
Student with an intellectual disability and emotional disturbance was subjected to discipline and eventually placed on home teaching. There was no effort to develop a behavior plan. Parents refused to sign the IEP and filed for a hearing. District alleged that parents were uncooperative.
- “Parental hostility is relevant to FAPE, but the focus is the District’s responsibility, not the parent’s fault.”
- Held: for the parent

# In Re Child with Disabilities

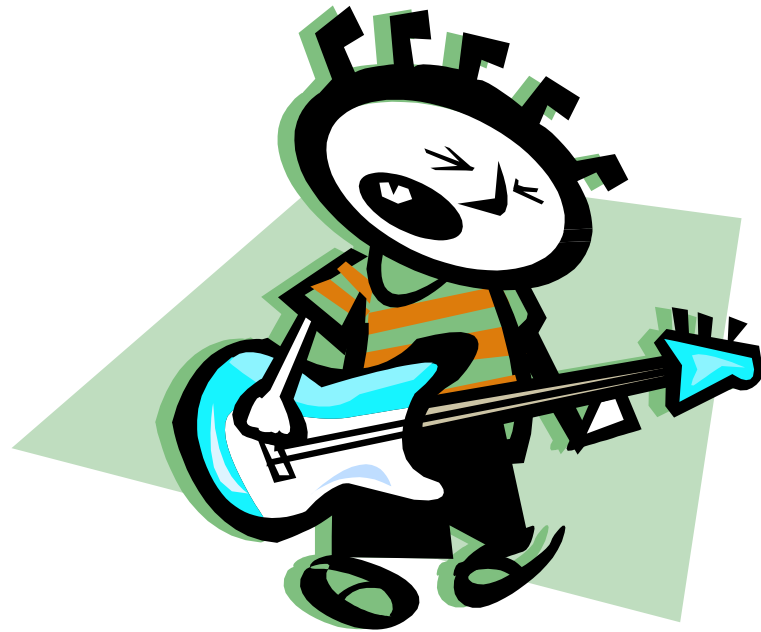
- 19 IDELR 86 (1992)
- Ongoing dispute between parents and case manager/teacher of student with a disability.
- Although the student (A.P.) was unaware of the hostility among the parties the Hearing Officer ordered the removal of the case manager/teacher from A.P. education citing:

# In Re Child with Disabilities

- “The parents harbor a real sense of distrust and hostility towards her which would make it impossible for the parents to have the kind of meaningful participation on A.P.’s team required by the ED if she were to remain on the team, and A.P.’s opportunity to benefit educationally from the team’s effort would be compromised by either Ms. M.’s continued participation or her parents’ meaningful lack of it.”

# The End

- Closing thoughts
- Questions





Presentation by Selene Almazan, Esq.

[www.mcie.org](http://www.mcie.org)