



Parent Perspective:

How Effective Engagement & Collaboration Can Improve Educational Outcomes for Children

Empowering the IDEA Parent As Partner

Maura McInerney, Esq.
Education Law Center
November 9, 2012

Essential Role of the Parent

- Special Education process cannot function without a “parent” -- an active, involved decisionmaker who is needed to “consent” to evaluations, services, placement, etc.
- The IDEA confers very specific rights and obligations on the IDEA Parent including right to consent, object & the right to due process.
- Understanding these rights and responsibilities is critical to effective advocacy, collaboration and ensuring a child’s ultimate success in school.

Barriers to Effective Participation by IDEA Parent

- This is emotional for the Parent
 - It is their child
 - Feelings of denial, embarrassment or guilt
- Lack of understanding of the process, meaning of assessments, IEP goals, etc.
- Lack of knowledge and expertise
- Difficulty following complex, long IEPs
- Outnumbered and intimidated at meetings

Parent's Bill of Rights

As a parent you have the right

- To have your child receive a free, appropriate public education (FAPE)
- To be a member of the team that develops your child's education program
- To understand every document you sign
- To pursue other options if you disagree with your school
- To know and understand your rights in the language you understand best.

A Parent's Bill of Rights

You have the right

- To request and consent to an initial evaluation, re-eval and independent evaluation or to refuse to consent.
- To request, attend and participate in IEP meetings.
- To receive written notice (Notice of Recommended Educational Placement/Prior Written Notice or NOREP/PWN) when a school decides your child is eligible for special education, and at any time before your school district changes your child's program or refuses to change it.
- To receive all procedural safeguard notices.
- To disagree with and to dispute decisions.
- To fully participate in Due Process and to appeal.
- To obtain copies of all of your child's education records.
- To remove your child from special education.

Overview

- Who is the IDEA parent?
- A Parent's Rights: A Walk Through the Special Education Process
- A Parent's Responsibilities
- Role of a Parent in Engaging the Youth
- Dispute Resolution & Due Process System
- Effective Advocacy and Collaboration

Who can make special education decisions?

- A “parent” is needed to make special education decisions for child
- The Individuals with Disabilities Education Act (IDEA) defines a “parent” as
 - A *natural or adoptive parent*
 - A *foster parent*
 - A *guardian* but not the State (thus no caseworkers)
 - A *person acting in the place of a parent*
 - Such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare; or
 - A *surrogate* parent

Who can make special education decisions?

- Two caveats to “parent” definition:
 - Presumption in favor of Biological or Adoptive Parent if
 - Bio./adoptive parent still has legal authority
 - Bio./adoptive parent is “*attempting to act as the parent*”
 - Unless a court orders someone else to act as the “parent”
 - So if no bio parent, but there is a foster parent, foster parent is the “parent”

See 34 C.F.R. § 300.30(b)

Protecting Our At-Risk Children

- Some children may be living with a grandparent or other person acting in the role of a parent
- Many of our most vulnerable children may NOT have an active, involved parent...
 - Children in the child welfare system
 - Unaccompanied homeless youthAnd may need a “surrogate parent”

Who can make special education decisions?

- When is bio./adoptive parent “attempting to act” as a parent?
 - Rights of a bio parent:
 - School should notify bio parent and document efforts to engage parent & accommodate their schedule for IEP meetings, etc.
 - School may appoint a surrogate “parent” to act on the child’s behalf only in limited circumstances
 - Judge may appoint a surrogate parent in the child’s best interest – court proceeding gives bio parent an opportunity to oppose appointment

When Does a Child Need a Surrogate Parent?

- School district must appoint a surrogate if :
 - No “parent” can be identified
 - School, after reasonable efforts, can’t locate parent
 - Child is a ward of the state under laws of that state
 - Child is unaccompanied homeless youth
- School can’t appoint a surrogate just because the bio./adoptive parent is “uncooperative” or won’t attend a meeting (71 FR 46689)
- School must have methods to decide if a child needs a surrogate and for assigning surrogate
 - Must make reasonable efforts to appoint in 30 days

Who can you ask to appoint a surrogate parent?

From: 20 U.S.C. § 1415(b)(2)

- Ask the school district
 - *Should* appoint within 30 days
 - Can suggest someone (for example: an aunt, the foster parent, or a CASA)
- If child is in custody of a child welfare agency, can also ask the judge
 - Unless a foster parent is available
 - But judge can appoint an alternative-decision maker instead (but it cannot be a caseworker)
 - Ask for order
 - The school must honor the judge’s selection

Surrogate Parents (continued)

■ Who may **not** be a surrogate parent?

- Employees of school district or Pa Dept. of Ed.
- Employees of "any agency that is involved in the education or care of the child"
 - DHS, Children & Youth or Private Agency workers

■ Other rules for School-appointed surrogates:

- Can't have a conflict of interest
 - Rule does not apply to judge-appointed surrogates
 - "Conflict" is defined by U.S. Dept. of Ed as coming from the employer relationship (e.g., can't be teacher in another school district, or in the group home where child is living)
- Must have knowledge and skills to represent child
 - Rule does not apply to judge-appointed surrogates, so school can't force them to attend the school's surrogate class

Rights of a Surrogate Parent

- Surrogate parent rights:
 - Review education records
 - Receive notice of school district proposed actions
 - Participate in IEP meetings
 - Accept or reject a proposed IEP and placement
 - Dispute school district decisions by filing a complaint or requesting mediation or a hearing
- Surrogate parents do **not** have any rights outside of the special education system

- **The Rights of A Parent:**

**A Walk Through The Special
Education Process**
(34 C.F.R. Part 300)

A Parent's Right To Ask

(from 34 C.F.R. Part 300)

- Parents have the right to ask a school district/LEA to evaluate the child to see if he has a disability and needs special education services in school.
- Parent has the right to fair and accurate evaluation.
- The child must be assessed using tests and procedures that do not reach incorrect conclusions because of the child's disability, language or ethnic background.

A Parent's Right To Ask

(from 34 C.F.R. Part 300)



■ Right to Request an Initial Evaluation

- Must be in writing
- "Parent" must sign a Permission to Evaluate Form (PET form)
- Parent may identify areas of suspected disability and explain concerns
- District has 60 calendar days** to complete the evaluation and issue the Eval. Report (ER)
 - Count time from the date of the PET form

Parent's Right to Consent

- An LEA cannot evaluate a child for the first time without a parent's written permission unless a special education hearing officer has ordered an evaluation.
 - If parent does not consent, school can go to a hearing to get an order for the evaluation
 - School must show hearing officer why the parent is wrong to block the evaluation - rarely invoked.
- Even if the evaluation team decides that the child is eligible for special education services, a parent does not have to accept those services for her child and can refuse to consent.

Exception for “Wards of the State”

(children in the custody of a child welfare agency who do not have a foster parent with the power to make special education decisions)

- School districts may conduct initial evaluations without parental consent if:
 - The school district can't locate the parents after making reasonable efforts
 - The birth parents rights are terminated (TPR)
 - Or a judge removes the birth parents' educational rights (temporarily or permanently) & consent is given by an individual the judge appoints
- School/judge should appoint surrogate in the interim
 - School cannot provide initial special ed services without consent of “parent”

The Right to Ask Again: A Parent's Role in The Evaluation Process

(from 34 C.F.R. Part 300)

- Parent is a member of the evaluation team & must be allowed input in eligibility decision
- Parent may share private evaluations or evaluations as part of this process
- Parent may request Independent Educational Evaluation (IEE) which may be at public expense if parent disagrees with school's evaluation (only one IEE per school evaluation is permitted).

A Parent's Right to an Independent Evaluation ("IEE")

- Parent may request an independent educational evaluation if she thinks the school's evaluation was not done properly.
- Parent can ask the school to pay for an educational evaluation of child by an approved evaluator who does not work for the LEA.
- However, if the district believes that an independent evaluation is unnecessary and a hearing officer decides that the school's evaluation is appropriate, parent can still pay for own evaluation.

Parent's Right to Rely on A School District

- Each school district has a "child find" obligation under the IDEA
- Parent has a right to rely on information provided by school re. child's progress
 - Example: Statute of limitations under IDEA runs from time parent "knew or should have known" of problem; exception applies where school district misled or withheld information

Parent's Right To Prior Written Notice

- Parent has a right to receive written notice (called the *Notice of Recommended Educational Placement (NOREP)/Prior Written Notice*) in the language he understands best before the LEA does any of the following:
 - Determines child's eligibility for special education services
 - Determines child's disability
 - Decides what services child will receive
 - Decides where child will receive services
 - Determines child is no longer eligible

Parent's Right to Services

If a child is eligible for special education services, Parent can:

- Enroll/maintain child in the local public school district to get services or
- Keep child in a private school and he or she may be able to get some limited services (but not an IEP) from the LEA, based upon the private school agreement regarding the use and availability of equitable participation (EP) funds. When EP funds are depleted, services are no longer required or provided under EP.

Parent's Right to Participate in the IEP Team

- Parent has the right to participate in developing an education plan (Individualized Education Program or IEP).
- **Parent is a CRITICAL MEMBER of the team that makes decisions about the child's education.** Parent needs to have the opportunity to share information and express her opinion at any team meeting or anytime it will help the child.
- The team decides how much and what kind of services a child needs and where your child's services will be provided.
- Talking with the other members of the team early on can often prevent problems later. Open, mutual communication between Parent and members of the child's team **MUST BE** encouraged in order to provide an appropriate program for the child.

The IEP

(from 34 C.F.R. Part 300)

- Focus on needs and "progress" of child
 - Measurable Annual Goals & Objective Benchmarks
 - Specially designed instruction in academics Phys Ed, travel & vocational training
 - Related Services: transportation, speech therapy, physical therapy, counseling, etc.
 - Transition Services: starting at age 16 (or age 14)
 - Assistive Technology: (devices/services): to increase functional capabilities of the child
 - Ex: wheelchair, communication devices, etc.

Parent's Role in Placement Decision

(from 34 C.F.R. Part 300)

- When is it made? Who decides?
 - Placement should be decided after IEP written
 - The team, including parent decides
- What is LRE?
 - Children with disabilities should be educated with their non-disabled peers to the maximum extent appropriate
 - Key: **least restrictive environment** in which IEP can be implemented successfully using **supplementary aids/services**
- Parents must be given prior written notice of IEP & Placement before it starts
 - NOREP: Notice of Recommended Educational Placement - Parents can disagree with the IEP and/or placement

Other Rights

(from 34 C.F.R. Part 300)

- Implementing/Revising IEPs
 - When and how often?
 - Must be implemented w/in **10 school days**
 - IEP team must meet at least annually
 - Parents may request IEP meeting at any time
 - Reevaluations
 - When?
 - Every 3 years (2 years if child with MR); or
 - If parent requests a reevaluation; or
 - If school believes "conditions warrant"
- BUT school need not agree to > one a year

Parent's Right to Education Records

- Parents have a right to see all of the child's education records.
- Parents have the right to retain the privacy of those records.
- Parents also have the right to prevent the LEA from sending the records to someone else without your written permission (with some exceptions).
- The school must give a Parent a free copy of the child's IEP.

Parent's Rights in Discipline Process

- The child is expected to follow his or her school's code of conduct.
- However, children receiving special education services have certain rights when it comes to school discipline. Some rules a school must follow are:
 - The IEP team must decide if the child's disability caused the misbehavior for which the school wants to discipline the child.
 - Parent **MUST** participate in this process.

Parent's Rights in Discipline Process

- The child has a right to a **manifestation determination**. This decision must be made before the school can:
 - Suspend a student with an IEP for more than 10 school days in a row or 15 total school days in a school year
 - Transfer the student to an alternative school for more than 10 school days in a row
 - Exclude a child with mental retardation for any amount of time
 - If the offense involved drugs, weapons, or serious injury to someone, the school can move the child to a different school for no more than 45 school days without parent permission, even if the behavior was caused by the student's disability. The district must provide an appropriate special education program for your child, although not necessarily in the same school setting
- The rules about discipline of students with disabilities are complicated for parents. Parents can call the State's Disabilities Rights Network or another organization to learn more information about their rights.

Parent's Right to Disagree

- Parent may raise disagreements with the school district at the IEP meeting, before the IEP meeting and at **anytime**.
- Parent may request an IEP meeting to address these concerns.
- LEAs must document a parent's disagreements with the school on the NOREP where applicable.
- Parents should be actively encouraged to communicate disagreements and need to understand what a school is willing or not willing to do.
- Disagreements are inevitable and an important part of providing effective services.

Right To Keep The Child In the Same Program During A Dispute

- ***Right To Keep Child in the Same Program While Awaiting Mediation or a Hearing to be Completed***
 - If Parent or school requests mediation or a hearing, the child must "stay put" in his or her current program until the disagreement is resolved. That means that the school can't change the program until the mediation, hearing, and any court actions have ended.
- **To make sure the child "stays put," Parent must:**
 - Check the box on the *Notice of Recommended Educational Placement (NOREP)/Prior Written Notice* form that indicates that Parent requests either mediation or a hearing; **AND**
 - Ask school for a *Due Process Complaint Notice* form. Fill it out and send it to the Administrative Office & send a copy to LEA

Parent's Right to File an Administrative Complaint

- **Administrative Complaint:**
 - **When:** School isn't following the IEP or a clear legal rule (ex: timelines, procedures, etc.)
 - **Who:** Anyone may file a complaint on behalf of child
 - **How:**
 - Must send a copy of complaint to the school
 - Certain required information must be in the complaint (name, address, facts about the problem, proposed resolution)
 - Limit: only violations in past calendar year
 - **Timeline:** 60 days to investigate and issue report

See 34 C.F.R. § .151-.153

Parent's Right To Mediate A Dispute

- Parent can ask for "mediation" to settle a disagreement with the school about a child's special education program. Mediation:
 - Is overseen by a neutral party (the mediator)
 - Is free
 - Is voluntary on the part of the parents and the school
 - Can be used without requesting a hearing or can be tried after a hearing is requested
 - Can help Parent and school staff come to agreement

Parent's Right to A Due Process Hearing

- Parent may ask for a hearing if:
 - She believes that the IEP offered does not meet her child's needs
 - He believes that his child should be educated in a different place
 - There is any other important point on which Parent and LEA disagree (related to evaluation, identification, FAPE, or educational placement)

Parent's Rights At the Due Process Hearing

- At a **due process** hearing, Parent has the right to:
 - Bring an attorney to the hearing
 - Understand and participate in the hearing
 - Have experts provide opinions
 - Testify at the hearing
 - Give the hearing officer important records
 - Ask questions of the school's witnesses
 - Have an interpreter present to translate as needed
- Challenge the decision on appeal

Special Education Hearing

- Rules
 - "PARENT" must request a hearing
 - Parent needs to be informed of "how" to request a hearing
 - Send written "complaint" letter to school and state
 - WHEN complaint must be filed
 - WHO to talk to about the process
 - Resolution Session or Mediation is required to try to work it out unless the parties waive
 - Hearing scheduled if no agreement reached
 - Decision within strict time period

Parent's Right to Remove

- Parent can unilaterally decide to withdraw a child with a disability from the receipt of special education and related services at any time.
 - Parent must request this **in writing** to LEA
 - Request includes every aspect of special education and related services; it is "all or nothing"
- School district/LEA:
 - May not challenge decision by taking Parent to due process
 - May not continue to provide special education and related services to the child
 - Must provide a *NOREP/Prior Written Notice* within 10 calendar days after receipt of written revocation before stopping the provision of special education and related services
- Inform Parent that LEA will not amend child's education records or to remove references to receipt of special education services

Parent's Responsibilities

- To read and review notices, education records, IEPs etc.
- To participate in meetings, ask questions, raise concerns, communicate with school district and notify school of changes
- To explain disagreements, comply with dispute resolution process
- To support child in special ed process

Role of Parent in Engaging Youth

- Parent can bring child's interests and concerns etc. into the discussion
- Communicate with youth about the process etc.
- Support youth's involvement in IEP meeting and process.
- Ensure that youth is involved in and at the center of developing transition plan.

Lessons Learned

- Set the tone for partnership and mutual respect early
- Explain the process first
- Always break down acronyms, test, etc.
- Encourage input and open communication
- Support participation in meetings and continuing dialogue re progress
- Accept conflict as part of the process
- Emphasize the SAME common goal: The child's education and "life" outcome

Contact Information

- Maura McInerney
mmcinerney@elc-pa.org
215-236-6970 Ext. 316
Education Law Center
1315 Walnut Street
Philadelphia, PA
www.elc-pa.org