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Fighting Fire in Your IEP: Avoiding Internal Challenges to IDEA Compliance

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About

In the 25 years since the firm was formed, we have grown into one of the premier labor, employment, and education practices in the country. Our firm has one of the largest teams of K-12 education lawyers in Illinois. We work with school districts, schools, and cooperatives of all sizes—ranging from hundreds to hundreds of thousands of students—in all areas of the State.

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Agenda

- Goal: Address and correct internal problems that can sabotage IDEA compliance
- Topics to be covered:
 - The team member who is not prepared;
 - The team member who will not agree or compromise;
 - The team member who resists/refuses to provide required services; and
 - The team member who talks too much outside of the IEP process

The Team Member Who is Not Prepared

Addressing the “Joey” of Your IEP Team

- Set clear expectations
 - HB 3586: Requires drafts of written material to parents three (3) school days in advance of the IEP meeting
 - Collaborate with other school team member on talking points and issues to review
 - Anticipate parent concerns, reactions, and questions

Continuing Problems with “Joey”

- Implement progressive discipline in accordance with the appropriate CBA, if applicable
- Adhere to due process standards
- Document the issue and include clear directives for the future

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**The Team Member Who
Will Not Agree or
Compromise**

Scenario

An IEP team is discussing placement for a sixth-grade student with autism. The team agrees to put him in a self-contained placement for students with communication disorders for reading and math. Although this classroom is an option for science and social studies, the team determines, at parent insistence, to place the child in the regular education setting for science and social studies. The general education teacher for science, who is present at the meeting, considers this an injustice given the student's needs and indicates her refusal to go along with this placement. What do you do?

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Next Steps

- How to move forward with:
 1. The IEP process
 2. Any employment issues that have arisen

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The IEP Process

- Team consensus determines placement
- Candidly but diplomatically discuss the science teacher's concern(s)
 - Test generalizations by asking direct questions
 - Examine all sides of the issue
 - Solicit perspectives from all team members

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Addressing Employment Concerns

- Public employees have a right to speak on matters of public concern. *Pickering v. Township High Sch. Dist. 205*, 391 U.S. 562 (1968).
- *Pickering* balancing test:
 - Employee interest as a citizen speaking out on matters of public concern vs. the schools interest of providing public service effectively and efficiently

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Is Discipline Appropriate?

- It depends...
- Examine the validity of the teacher's expression during the meeting in the context of the particular situation
 - Are the teacher's concern(s) valid?
 - Is the intent to undermine the team? Or an administrator?
- Consider how the comment was made in addition to the substance of the comment

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The Team Member Who Refuses to Provide Services

I WOULD
PREFER
NOT TO.

Common Scenarios

- Frequent examples of when employees say "no":
 - Administration of medication
 - Nurse disagreement with physician's orders
 - Services that are not medical, but need to be provided (e.g., g-tube feeding, etc.)

Be Proactive

- Include an accurate scope of duties in all job descriptions for positions in special education
- Provide training that includes legal rationale for required tasks
- Use progressive discipline to address employee refusal/failure to perform required tasks

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The Employee Who Talks Too Much Outside of the IEP Process

Scenario

Evan is a second grader eligible under the category of OHI. At the end of the year, he is reading texts at a Fountas & Pinnell Level L, which by your District standards, is lower than his peers. At his IEP team meeting, parent demands ESY to “catch him up.” The team reviews his progress, and determines ESY is not required. Later, at a class field trip, the parent corners the special education teacher, asking again about summer services. The teacher replies that if he just had additional services, he could excel. The parent files a due process asking for ESY the next day.

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How Could This Scenario Be Prevented?

- Train staff on when services are legally required
- Collaborate and compromise with the IEP team to identify and stay the course on programming
- Create talking points for difficult or persistent parents to stay on message

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Is Discipline Appropriate?

- It depends...
- Consider whether the comments would be protected under the *Pickering* analysis
- If a general education teacher is at issue, consider whether there has been explanation or training on responding to parent inquiries of this type
- Determine whether the issue will be resolved by discipline or whether it could be made worse

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Takeaways

1. Set expectations for IEP meetings—identify responsibilities for each team member and standards for collaboration, participation, and tone
2. Encourage collaboration prior to the IEP meeting
3. Correct missteps when they occur—use progressive discipline and/or additional training to press the “reset” button

Questions?

