

ATTORNEYS AND ADVOCATES AT IEP MEETINGS

Guideline and Procedures for Parents and Staff

Purpose

The district believes that collaboration between district staff and parents is at the heart of the IDEA. These guidelines are intended to facilitate transparent communication between the district and parents or legal guardians in regard to the intended participation of attorneys and legal advocates at IEP meetings. It is the hope that this transparency and cooperation in advance of the meeting will assist both the district and the parents as they prepare for the meeting, will minimize the risk of any meeting needing to be rescheduled, will foster continued collaboration and cooperation between district staff and the parents, and will help create an environment that promotes decision-making that is student-focused.

Attorney Attendance at IEP Meetings

Both the district, as well as a parent or legal guardian of a student with special needs, have the freedom to bring an attorney with them to an IEP meeting. However, the Office of Special Education Programs (OSEP) “strongly discourages” the practice of bringing an attorney or legal advocate on the rationale that the presence of such individuals increases the risk that the relationship between the district and the parents turns less collaborative and more adversarial, and can hinder the ability of the team to make decisions in the best interest of the child. *See Letter to Serwecki*, 44 IDELR 8 (OSEP 2005); *see also Letter to Clinton*, 37 IDELR 70 (OSEP July 2001); *Letter to Garvin*, 30 IDELR 541 (OSEP 1998).

In an effort to foster this collaboration between staff and parents, the district will bring an attorney or advocate to an IEP meeting only in the unique circumstances described below.

Parent Representation at IEP Meetings/Procedures

The district respects all parents’ right to have representation at IEP meetings, and encourages parents to make decisions regarding representation at IEP meetings that are in the best interest of their family and their child. The district also recognizes that, from time to time, a parent may choose to invite an attorney or legal advocate to attend an IEP meeting. These guidelines are intended to help to facilitate this process.

- A. In advance of every IEP meeting, parents are strongly encouraged to disclose their intention of bringing an attorney, legal advocate, or employee of an attorney or law firm to an IEP meeting.
- B. To facilitate this disclosure, district staff who schedule the meeting should ask parents if they intend to bring an attorney, advocate, employee, or other individual closely affiliated with an attorney, law firm, or organization that represents parents of children with disabilities.
- C. As part of this request, district staff will notify parents that if the parents elect to bring an attorney, the district will also bring an attorney to the meeting.
- D. Staff will also notify parents that if the parents intend to bring an advocate or other individual employed by or closely affiliated with an attorney, law firm, or organization that represents parents of children with disabilities, this *may* prompt the district to bring legal counsel to the meeting. If the district chooses in this instance to bring an attorney to the meeting, parents or

their counsel/advocate will be notified in advance of the meeting that counsel for the Board will be in attendance.

District Representation at IEP Meetings/Procedures

Consistent with the guidance from OSEP, it is the district's general practice to not include attorneys or advocates who represent the district in IEP meetings. However, there are limited circumstances when the district may exercise its discretion and deviate from this practice.

- A. When a parent has informed district staff that they will be bringing an attorney, it is the routine practice of the district to also have representation.
- B. While not routine, there are other times when the district *may* choose to have legal representation at an IEP meeting. In these instances, the parents or legal guardian will be provided notice in advance of the meeting that the district intends to bring an attorney or a lay advocate to the meeting. Instances when this may occur include the following:
 - a. When the parent provides notice of their intention of bringing a lay advocate or other individual employed by or closely affiliated with an attorney, law firm, or organization that has previously represented parents of children with disabilities;
 - b. When a parent has an active state complaint pending with the Department of Public Instruction;
 - c. When a parent has an active due process petition pending in the Office of Administrative Hearings;
 - d. When a parent is an attorney; and
 - e. When the parent acts as a lay advocate for other parents or legal guardians of children with disabilities.
- C. In limited circumstances, the district may elect to have an attorney *available* to participate in a scheduled IEP meeting. In these instances, the district's attorney will *only* participate in the meeting if the parent arrives with an attorney, lay advocate or other individual closely affiliated with the attorney, law firm, or organization that has previously represented parents of children with disabilities. Instances when the district may elect to have counsel on stand-by include:
 - a. When the parent has previously failed to provide advance notice of their intention of bringing an attorney, lay advocate, or other individual closely affiliated with an attorney, law firm, or similar organization;
 - b. When the parent has indicated they are represented by an attorney but has failed to provide notice as to whether they intend to bring an attorney to the meeting; or
 - c. When the district has received written communication regarding the student from an attorney, law firm, or legal organization that has a history of representing clients that do not routinely disclose in advance their intention of bringing to the IEP meeting a lay advocate or other individual closely affiliated with that attorney, law firm, or legal organization, or the parents inform the district they are working with such attorney, law firm, or organization.