

Strategies for Managing Parental Threats, Demands, & Disruptions without Violating Parental Participation Rights

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Agenda

- ◆ Meaningful Parental Participation under the IDEA
- ◆ Harassment & Hostile Environments
- ◆ Retaliation
- ◆ Practical Strategies for Dealing with Parental Threats, Demands, & Disruptions

Disclaimer: The information in this handout and presentation is for the purpose of providing general information and is not intended to provide legal advice or substitute for the legal advice of counsel.

Meaningful Parental Participation under the IDEA



Parental Participation

- ◆ The IDEA requires school districts to provide parents with meaningful participation in the development of their child's IEP. 34 C.F.R. § 300.513(2).
- ◆ Failure to provide meaningful parental participation can result in a denial of FAPE.

Violation of FAPE

- A procedural violation results in substantive harm when it
 - (1) impedes the child's right to FAPE;
 - (2) significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or
 - (3) causes a deprivation of educational benefit.

34 C.F.R. § 300.513(2).

Limiting Parental Communication

- ◆ Therefore, anytime we limit parental communication we risk a claim that we have violated meaningful parental participation.

Harassment & Hostile Environments



Harassment

- ◆ According to the U.S. Equal Employment Opportunity Commission (EEOC):

- ◆ Harassment is unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, transgender status, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history).

- ◆ Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

<https://www.eeoc.gov/harassment>

Harassment

- ◆ According to the U.S. Equal Employment Opportunity Commission (EEOC):

- ◆ The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

- ◆ When investigating allegations of harassment, the EEOC looks at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis.

<https://www.eeoc.gov/harassment>

Hostile Work Environments

- ◆ What qualifies as parental harassment that causes a hostile work environment?
 - ◆ Harassment can include threats, stalking, cyberbullying, or repeated malicious, false, and abusive behavior.
 - ◆ The parent's conduct must be more than a mere annoyance.
 - ◆ It must be intimidating, hostile, or offensive to a reasonable person.
 - ◆ The parent's conduct must be motivated by the teacher's protected characteristic (e.g., disability, race, sex).

Responding to Parental Harassment

- ◆ What is the district's obligation if a teacher reports parental harassment based on a protected characteristic?
 - ◆ The district should take immediate and appropriate actions to try prevent further harassment.
- ◆ What if the threat does not involve a protected characteristic, but it threatens the person's safety?
 - ◆ As needed, the district should notify the police if harassment involves threats to the health or safety of staff or involve other criminal acts.

Threats- Criminal Acts

- ◆ In Connecticut, person is guilty of threatening in the first degree when such person:
 - ◆ Threatens to commit any crime involving the use of a hazardous substance with the intent to terrorize another person, to cause evacuation of a building or otherwise cause serious public inconvenience.
 - ◆ Hazardous substance is defined as any physical, chemical, biological, or radiological substance that in a certain quantity can cause or contribute to an increased chance of death or serious illness.
 - ◆ Threatens to commit any crime of violence with the intent to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience.
 - ◆ Or commits threatening in the second degree and in the process they have/use/or threaten to use a firearm.

Threats- Criminal Acts

- ◆ In Connecticut, a person is guilty of threatening in the second degree when:
 - ◆ (1) By physical threat, such person intentionally places or attempts to place another person in fear of imminent serious physical injury,
 - ◆ (2) (A) such person threatens to commit any crime of violence with the intent to terrorize another person, or (B) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror, or
 - ◆ (3) violates subdivision (1) or (2) of this subsection and the person threatened is in a building or on the grounds of a...public or nonpublic preschool, school or institution of higher education...during operational, preschool, school or instructional hours or when a building or the grounds of such...preschool, school, institution or day care center are being used for the provision of...preschool, school, institution or day care center-sponsored activities.

Connecticut General Statute § 53a-62.

Threats- Criminal Acts

- ◆ True threats are not protected by the First Amendment. *State v. Carter*, 141 Conn. App. 377 (2013).
- ◆ Courts have defined terror as, “words or acts meant to scare or to cause intense fear or apprehension in another person.” *State v. Crudup*, 81 Conn. App. 248 (2004).

Retaliation



Retaliation

- ◆ According to the U.S. Equal Employment Opportunity Commission (EEOC):
 - ◆ Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

<https://www.eeoc.gov/harassment>

Retaliation

- ◆ Retaliation means acts that “intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights he has under Section 504.”
- ◆ Retaliation also includes taking actions against an individual who has filed a complaint on behalf of an individual with a disability.

34 C.F.R. 104.61.

Elements of Retaliation Claim

- ◆ **Kirilenko-Ison v. Bd. of Educ. of Danville Indep. Schs., 77 IDELR 91 (6th Cir. 2020).**
 - ◆ The 6th Circuit Court, in a case involving retaliation against two school nurses who advocated for a change in program for students with diabetes, explained that in order to establish unlawful retaliation the nurses needed to show that:
 - ◆ 1) they engaged in a protected activity;
 - ◆ 2) the district knew about that activity;
 - ◆ 3) the district took adverse employment action against them; and
 - ◆ 4) the protected activity was the reason for the adverse action.
 - ◆ The Circuit Court further explained, “if the district showed that it had a legitimate, nonretaliatory reason for the employment action, the nurses could still prevail by showing that stated reason was a pretext for retaliation.”

Cont.

A District's Reasoning for its Actions Must Not be Pretextual

- ◆ **Kirilenko-Ison v. Bd. of Educ. of Danville Indep. Schs., 77 IDELR 91 (6th Cir. 2020), cont.**
- ◆ The District Court held, “Because a reasonable jury could find in the nurses' favor the District Court erred in granting judgment for the district.”

Parent's Band from School Grounds was Not Retaliatory

- ◆ **H.C. et. al. v. Fleming Cnty. Kentucky Bd. of Educ., 72 IDELR 144 (6th Cir. July 11, 2018).**
 - ◆ The 6th Cir. affirmed a decision that a parent could not show that Kentucky district banned her from school property for retaliatory reasons.
 - ◆ The parent was banned from school property after she engaged in “contentious and unpleasant interactions” with school personnel.
 - ◆ The Court assumed that the parent had engaged in protected activity by filing for a Section 504 hearing and advocating for her child regarding discipline.
 - ◆ The ban occurred shortly after the parent’s protected activity.
 - ◆ However, the parent could not present any evidence that the ban was for retaliatory reasons, and the district had kept a detailed record of the parent’s interactions leading to the ban from school property.

Practical Strategies for Dealing w/ Parental Threats, Demands, & Disruptions



Identify the Type of Conduct

- ◆ Identify whether the parent's conduct to determine the appropriate response:
 - ◆ Does the conduct involve a threat of a criminal magnitude?
 - ◆ Does the conduct involve harassment against an employee based on a protected characteristic of the employee?
 - ◆ Does the conduct involve inappropriate conduct in violation of board policy?
 - ◆ Or is the conduct forceful or appropriate advocacy that the employee is viewing negatively?

Responding to Illegal Conduct

- ◆ If the conduct involves a threat of a criminal magnitude—
Contact law enforcement.
- ◆ If the conduct involves harassment against an employee based on a protected characteristic of the employee—
Investigate and put protective measures in place to eliminate the harassment.

Responding to “Legal” Conduct

- ◆ If the conduct is a violation of board policy—It should not be allowed.
 - ◆ If minor in nature (e.g., cursing), warn the parent that their conduct violations board policy and they will be asked to leave if they don’t stop the conduct.
 - ◆ If the parent does not stop, ask the parent to leave.
 - ◆ If the parent will not stop and will not leave campus, involve an SRO/law enforcement.
 - ◆ If severe in nature—it is likely illegal. (See prior slide).

Responding to “Legal” Conduct

- ◆ If the conduct is “appropriate” (even if annoying or forceful) advocacy that the employee is viewing negatively:
 - ◆ Implement measures to either:
 - ◆ Assist the employee in addressing mental health or competency concerns.
 - ◆ Training in skill deficit
 - ◆ Mental health supports
 - ◆ Put measures in place to reduce the impact of the parent’s advocacy on that employee. (See strategies below).

Practical Strategies for Dealing with Parental Demands

- ◆ Excessive calls/emails/texts to school staff regarding a student?
- ◆ Blocking the parent from corresponding with relevant staff can prevent meaningful participation in the student's IEP process.
- ◆ So...how do you handle this??

Practical Strategies for Dealing with Parental Demands

- ◆ What can you do about excessive calls/emails/texts to school staff regarding a student?
 - ◆ Set Boundaries—Inform parent that emails will only be responded to during school hours and/or certain days a week
 - ◆ Identify a point person—all communications and correspondence go to a single point person rather than multiple members of the IEP team
 - ◆ Don't rush to respond—give the relevant members of the team time to discuss and then draft an appropriate response.
 - ◆ Require communication/correspondence to be in writing.
 - ◆ Consult with administrators, attorneys if needed.

Practical Strategies for Dealing with Parental Demands

- ◆ When tensions rise in IEP meetings:
 - ◆ Maintain a balance of managing the meeting and allowing the parent meaningful participation.
 - ◆ Review meeting expectations at the start of the meeting.
 - ◆ Take a break if needed and/or reschedule the meeting if needed.
 - ◆ Consult with sped administrators and/or attorneys if needed.
 - ◆ Maintain focus on data driven decisions/legal compliance.
 - ◆ Try to address employee complaints outside of the IEP meeting.

Practical Strategies for Dealing with Parental Demands

- ◆ Dealing with Inappropriate Language/ Accusations by Parents:
 - ◆ Have an administrator in the meeting who is able to control the meeting.
 - ◆ Differentiate employee “attacks” from critical critique, which can be advocacy.
 - ◆ The administrator should be able to address parental “attacks” on IEP team members.
 - ◆ Differentiate IEP issues from “employee” issues and don’t allow parents to use IEP meetings as an avenue to inappropriately attack employees in front of their peers.
 - ◆ Hand pick IEP team members when possible.

Inappropriate/Threatening Conduct on Campus

- ◆ Dealing with inappropriate and/or threatening conduct on campus will depend on the severity of the conduct.
- ◆ If not severe (no safety concerns), start with less restrictive measures, such as issuing a warning letter that sets out the expectations in the future, including board policy requirements for visitors on campus.
- ◆ If the conduct was severe or the parent engages in the conduct again after a previous warning, the parent may need to be banned from campus (maybe just for a period of time).

Overarching Theme...

- ◆ We do not have to just “allow” parents to engage in conduct that violations board policy or is potentially illegal against a school employee.
- ◆ To the extent possible, we want to support teachers and IEP providers and reduce the stress caused by difficult parents.
 - ◆ Improves staff retention
 - ◆ Improves student outcomes
 - ◆ Ultimately, “happy teachers spark joy in learning.”

Thank You!

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