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**We the People,
In Order To Form a More
Perfect Case Conference...**


ICASE
October 4, 2017

NOBLESVILLE | FISHERS | HERTON | MERRILLVILLE | ZIONSVILLE

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- **Scheduling**
- **Setting the Scene**
- **Parental Challenges**
- **Using Article 7**
- **Drafting Goals + Services**
- **Responding to Unique Requests + Concerns**
- **Written Notice**

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Normalize the Process for Parents

<http://www.abcoolympics.com/video/side-sly-rahmane-hars-and-her-parents-reactions>

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Frame the Process for Parents

Problem-solving exercise	NOT a battle to be won
Meeting of equals	NOT a difference in status
Give + take	NOT "conceding is weak"

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Scheduling the CCC

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First: Get Your Team Together

Every single CCC should be prefaced with an internal school team meeting first

- When can we convene the CCC? (3 dates)
- What are present levels?
- Do we need anyone else at the table?
- What are our programmatic weaknesses + challenges?
- What are the Parents concerned about? Do we have proposed solutions for their concerns?
- **What do we want out of this meeting? What do Parents want out of this meeting?**

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Unplanned CCCs?

- Do not hold "spur of the moment" CCCs when Parents show up to school angry
- 511 IAC 7-42-4(a): Initial CCCs must be noticed 5 instructional days in advance
- 511 IAC 7-42-2(c): CCCs must be noticed early enough to ensure that one or both parents have the opportunity to attend

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Scheduling Around Parents

511 IAC 7-42-2(a)

A CCC meeting must be scheduled at a **mutually agreed upon date, time, and place**. If a parent cannot attend in person, the public agency must use other methods to ensure parent participation, including an individual or conference telephone call or video conference.

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Scheduling Around Parents

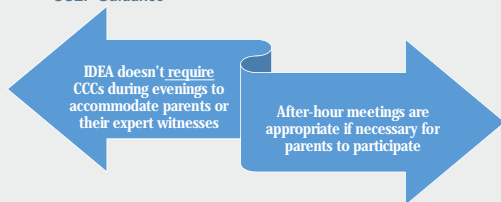
- When is it appropriate to hold the CCC without the parent?
- Reached out to parent at least 3 times through various methods (by phone, email, letter, home visit).
- Recorded documentation of attempts to schedule CCC.
- Convening CCC after 5:00 pm? Convening CCC at place other than home school?

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Holding CCC After School Hours

OSEP Guidance



*Letter to Thomas, 51 IDELR 224 (OSEP 2008);
Letter to Anonymous, 18 IDELR 1303 (OSEP 1992).*

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Holding CCC After School Hours

B.H. v. Joliet School District No. 86, 54 IDELR 121 (2010)

- Parent requested scheduling CCC for 3 different dates at 6:30 pm
- School said they were not obligated to hold CCC meetings after school hours.
- School proposed 7 alternative dates, all during regular school hours, and arranged for teleconference
- Court: "Parent now asserts that because the IDEA requires that IEP meetings be conducted at mutually agreed times, it necessarily follows that the school district must convene an IEP meeting at any time convenient to the parent. **Counsel for the parents apparently has missed the word "mutually" in the IDEA. The assertion that the school district acquiesce in the parent's demand is patently absurd.**"

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Tips for Scheduling Around Parents' Work

- Split the difference – agree to meet immediately after school hours, but not 7 pm
- Offer to hold meetings via teleconference or Skype
- Hold multiple shorter meetings (4:30-5:30 on 2 separate days)
- Inform Parents of other CCC participants' challenges – contractual day, family and personal obligations
- Remind Parents that CCC may be rushed
- Propose morning meeting (7:00 am?)
- Make a single exception (once a year?)

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Parent Participating by Phone

CP-076-2014

IDOE: "A CCC may be convened without the parent if the parent chooses not to participate in person or by other methods, and the School has documentation of its attempts to arrange the meeting for a mutually agreed upon date, time, and place. 511 IAC 7-42-2(b). In this case, the parent wanted to participate, so convening in the parent's absence when the parent clearly wanted to participate, is contrary to 511 IAC 7-42-2(b)."

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Do You Have the Right Decisionmakers at the Table?

- Most frequent violations: PAR and Gen Ed Teacher
- If the student is transitioning into another grade within 1-2 months, call the next grade's general education teacher and TOR.
- If the Student is in 3rd grade or older, Student needs invited to CCC. Parents can say no, but make sure you have them invited.
- Welcome advocates to the table. If someone shows up with Parents unannounced, ask for that person's role and business card.
 - "advocates" who work at law firms

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When Parents Refuse Certain CCC Attendees

CP-092-2014

- School and Parents exchanged emails to schedule the CCC and agreed upon a date + time
- Once School sent the Notice, Parents said they would not attend with the PAR
- "I request that [the PAR] NOT be there in person or via telephone. If her presence is made, I will terminate the meeting and reschedule it another date and will continue to do so until [the PAR] DOES NOT make her presence at the case conference. I understand she has a job to do and she can do her job from the sidelines or behind the scene, however I/we DO NOT have to deal with her nor will I/we."
- School offered for Parents to participate by phone but left PAR on Notice
- IDOE: "Because the School attempted to convene CCC meetings at mutually convenient dates and times, no violation is found."

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When Parents Demand Certain CCC Attendees

CP-078-2015

- On 3/11/15, Parents requested CCC to speak with the Dean and Program Assistant re: concerns about the Student
- School scheduled a CCC for 3/12/15, but Parents canceled because Program Assistant wasn't listed as an attendee
- School rescheduled for 3/17/15, but Parents canceled because Program Assistant wouldn't be present
- School continued trying to reschedule. CCC eventually held on 5/5/15.
- IDOE: "Parent requested a CCC meeting on March 11, the School scheduled meetings for March 12 and March 17, the parent cancelled, and a meeting was held on May 5, 2015. Therefore, no violation of 511 IAC 7-42-5(a)(3) is found."

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Providing Notice of CCC

CP-076-2014

- Parent (who was also an attorney and claimed to "represent" her child as counsel) grew contentious, so School invited their attorney to attend CCC
- School told Parent their attorney was coming but didn't include it on Notice
- IDOE: "The School had three days to create and send the Complainant a revised written notice including the attorney as an expected attendee after extending this invitation but failed to do so."
- IDOE: "The School's failure to provide the Complainant with adequate notice of all the expected participants for the... CCC constitutes a technical violation of 511 IAC 7-42-2(d)."

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Should You Provide a Draft IEP?

Federal DOE says No

With respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child's needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins.

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Should You Provide a Draft IEP?

Lessons from Case Law

- Changes between the draft IEP and final IEP demonstrated Parents had meaningful input into the final IEP. *Fort Osage R-V School District v. Sims* (W.D. Mo. 2010); *Fuhrmann v. East Hanover Bd. of Education*, 19 IDELR 1065 (3rd Cir. 1993).
- Caveat: Initial IEPs
- Do NOT draft for an initial IEP or draft Notice of Ineligibility where eligibility hasn't been determined yet.
- School that created a "draft" document stating that a student with dyslexia and ADHD was ineligible under the IDEA ended up impeding a parent's participation in an evaluation team report meeting. While the School might have been trying to save time, the Court found that it limited the parent's input by convincing her that the eligibility decision had already been made. *Allen East Local Schs.*, 61 IDELR 209 (SEA OH 2013).

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Providing Draft IEPs

<p>(+) More efficient CCC</p> <p>(+) Differences between draft and final IEP demonstrate no pre-determination</p> <p>+ Parents had meaningful participation</p>	<p>(-) Parents might hear pre-determination</p> <p>(-) May limit parental participation</p>
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Draft IEP Talking Points

- "This is a draft of the School's thoughts that we created just in order to have a jumping-off point and save time..."
- "Everything is open for discussion."
- "We have an open mind to anything you want to change or add."
- "This is not final until we get Parents' input."
- "We need your input and thoughts to make this a final IEP."
- "No decisions have been made."
- "This document may look entirely different when we walk out of this room, after we all talk."

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Setting the Scene

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- q Separate conference room
- q Water, snacks
- q Non-intimidating seat at the table
- q Name tags/plaques
- q Agenda
- q Visual aid – white board or poster
- q Sign-in sheet
- q Procedural safeguards

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Best Practices

- Sign-in Sheet and receipt of procedural safeguards
- It's not enough to state in the IEP Notes that a parent received a copy of the procedural safeguards notice at the CCC. Make sure the parent also signs the IEP or otherwise signs a document stating that she received such notice. Cincinnati Pub. Schs., 116 LRP 11536 (SEA OH 2016).
- Project IIEP or not? Can be confusing to Parents.
- One staff member takes notes, one staff member acts as PAR. NOT the same person.
- Remind Parent that you're following law: "We follow the federal IDEA and Indiana's Article 7 to ensure we provide John with a free appropriate public education."
- Demonstrate you are doing this because of legal obligations.

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Are You My Mother-PAR?

- Introduce everyone and explain your role (Name/title/role)
- "I'm the public agency representative, or PAR. The law requires someone from the school district to be here that knows about the curriculum and resources and is authorized to commit district resources. That's me!"
- If you don't make it clear who the PAR is and what their role is, Parents can become convinced that PAR is not there. CP-089-2015.

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Who can serve as PAR?

CP-089-2015

- School provided notice with Director of Guidance listed as PAR
- Parent wanted Student denied access to iPad throughout school day. PAR explained that iPads were used to deliver curriculum, so removing it was not in Student's interest. When Parent argued, PAR stepped out of meeting for a few minutes to see if Principal could join CCC and explain better. When Principal wasn't available, PAR returned and resumed meeting.
- Complaint Issue: Did the School designate a PAR who was knowledgeable about the availability of, and had the authority to commit, resources of the School for CCC? 511 IAC 7-42-3(a)
- Director has served as PAR at CCC meetings for 30+ students during the past year
- Director was generally knowledgeable about the availability of, and has the authority to commit, resources of the School, and possesses specific expertise in the delivery of the type of career and college preparation services required by the Student's IEP. Unwillingness to honor iPad was educational interest.

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Parental Challenges

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Custody Issues

When Mom says: "Dad doesn't have custody, he has no right to be here."

- Article 7 and IDEA have a broad definition of "parent"
- 511 IAC 7-32-70(a): "Any biological or adoptive parent whose parental rights have not been terminated or restricted in accordance with law."
- Unless specific court order denies Dad's right to participate in educational decisions or gives sole educational decision-making power to Mom
- Most circumstances: Parents share joint *legal* custody and One Parent has primary *physical* custody
- Who signs IEP? If joint legal custody, either parent counts.
- Do not hold separate CCCs for continuous Parents – separate rooms okay
- Provide dual copies of everything, including procedural safeguards

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Divorced Parents

CP-008-2015

- Divorced parents shared joint custody of Student. Student lives with Mom.
- Mom requested CCC to revise IEP. Two weeks before CCC, School sent Notice to Mom and Dad separately.
- Mom returned signed Notice.
- Five hours before CCC, Dad called School and said he couldn't come and wanted to reschedule. CCC proceeded anyway with Mom.
- IDOE: "Article 7 does not require the attendance of both parents at a CCC meeting."

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Noncustodial Parents

In re Student with a Disability, 116 LRP 25440 (SEA VA 2016)

- Parents shared joint legal custody, Mom had primary physical custody
- Court order stated: if the parents, after communicating about the child's educational plans, could not agree on her education, the mother's decision would control
- Teenage girl was suicidal. Parents agreed to evaluation and Student was found ED and ADHD.
- Dad changed his mind + revoked consent for services, filed due process
- Hearing Officer reviewed Court Order and determined Dad did not have standing to file for due process
- Since Mom wanted Student to receive services, School was right to refuse Dad's request to exit her from services

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Recording the CCC

Letter to Savit, 67 IDELR 216 (OSEP 2016)

- Okay to have a policy or procedure on recording meetings (i.e., Parents must give 5 days advance notice if they plan to record)
- Can't use recording policy to circumvent parental participation (if policy says 5 days notice, can't give Notice of CCC with 2 days notice and say "opps, sorry, not allowed to record")
- Okay to prohibit recording entirely but must allow exception for a parent who requires recording to understand the IEP.
- "Sally will be taking notes but we are not recording; I assume you are not recording either?"
- Check school district policy
- FERPA concerns, creating educational records

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Force Strongly Encourage Participation

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Encourage Parental Participation

- Ask directly: "Mom, do you have any questions?"
"Dad, do you agree?"
 - Indicate in notes parental agreement
- Parent can't claim lack of meaningful participation where parent declined to ask questions or identify concerns during the IEP meeting. *J.M. v. Kingston City Sch. Dist.*, 115 LRP 54727 N.D. N.Y. 2015
- "By refusing to participate in further conferences and unilaterally removing [Student] from his placement with [School], the parents eliminated the school's ability to make any such adjustments." *M.B. v. Hamilton Southeastern Schools and Hamilton-Boone-Madison Special Services* (S.D. Ind. Aug 2010)

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Using Mirroring + Empathy

"It sounds like you're concerned about..."

"It sounds like you're afraid of..."

"What I'm hearing you say is..."

"How?"

"I'm sorry, I didn't hear that. Can you repeat that last part for me?"

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Explaining Parental Input: Overheard at CCCs

School: "As a case conference, we will consider the private evaluation and doctor's notes and recommendations in revising the IEP. Is there anything else Mom wants to provide as input for our discussion?"

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Translations

IDEA doesn't require all IEP documents to be translated.

But lack of translations can amount to denial of FAPE as lack of meaningful parental participation

*Letter to Boswell, 49 IDELR 196 (OSEP 2007).
Philadelphia City School Dist, 115 IRP 36509 (SEA PA 2015).*

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Translation + Interpretation as Parental Participation

Philadelphia City School District, 115 LRP 36509 (PN SEA 2015).

- Mom spoke language other than English + had limited English proficiency
- School provided interpreter at all IEP meetings and provided translated evaluations, IEPs, and prior written notice, but sometimes documents were provided at the start of the CCC or after the meeting
- Both parties represented by attorneys (who speak English)
- IDEA requires prior written notice and procedural safeguards be in native language. 20 U.S.C. § 1415(b)(3).
- IDEA does not require translation of any other documents
- Court: "Having the documents in an accessible form . . . during the meeting was critical to meaningful participation. Given the parties' vastly different views regarding the Student's needs and abilities, the Parent was placed at an obvious disadvantage."
- Court: School satisfied IDEA's narrow translation requirements but, even in doing so, did not satisfy the IDEA's requirements for meaningful parental participation

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Using Article 7

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Explaining Eligibility

- Remind parents that the eligibility category is the door to open – it does not dictate services or placement
- Unique needs of the student

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Explaining Article 7: Overheard at CCCs

School [when Mom stated that Student will hide behaviors seen at home during evaluation]: "As a school, we do everything by Article 7 regulations, so we need to document areas of educational impact."

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Explaining LRE as a Continuum

Gen Ed Consultation Push-in Pull-out Special Ed/ Resource room Homebound Day Placement Residential

50 51 52 53/54 57

Where does 1:1 aide fall on spectrum?

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Explaining LRE: Overheard at CCCs

School: "All placement options are on the table. We are open to discussing anything you want."

School: "Your suggestion to go from the resource room to private 24/7 residential placement skips a few steps on the LRE continuum."

School: "Our goal is to have Student in least restrictive setting with typical peers."

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Explaining Manifestation Determinations

How can you really determine what is a manifestation?

- At a minimum: Evaluations, BIP, medical documents, disciplinary history, last 2 IEPs, parental input, student take on situation
- Does the Student only have this issue in one class? With one person?
 - This may demonstrate he has control over his behavior.
- Does the Student generally abide by the rules?
- Break up each incident into a separate determination.

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Key Phrases

- "Why do you believe that is necessary for FAPE?"
- "We do/don't believe that is necessary for FAPE."
- "We will note that you do not agree. We are relying upon [X data] to make this decision... is there any other data or information you want us to consider when we draft the IEP?"
- "What do we agree on?" (Make notes)

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Drafting Goals + Services

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Tying Goals to Needs

1. List the Student's needs / challenges
2. Draft goals
3. As you draft goal, draw a line between need + goal to demonstrate goals are directly aligned to Student's needs

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“Appropriately Ambitious” Goals

Andrew F. v. Douglas County School District RE-1

When a child can't be fully integrated into gen ed classroom, “the IEP need not aim for grade level advancement. But his educational program must be **appropriately ambitious** in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”

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Unanimous Decision

“To [provide FAPE], a school must offer an IEP reasonably calculated to enable a child to make **progress appropriate in light of the child's circumstances.**”

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Diploma Track

IDOE Guidance

“Keeping a student in general education, to the extent appropriate for the student, may require that the grade level curriculum be modified. For an elementary student, working on below grade level curriculum does not preclude the student from ultimately pursuing a diploma. It would be premature at best to say that a student who is working at first grade level while in the third grade can't obtain a diploma. The expectation should be that, with the appropriate special education services and interventions, the student will be able to close the achievement gap as he progresses through school, so that a diploma is the end result. **The key is to keep the student moving in the right direction – to determine at third grade that a student is not going to be on a diploma track does a disservice to the student, and may result in a denial of FAPE. The committee is not required to make a diploma track determination until the transition IEP.**”

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Drafting Behavior Plan

- Positive interventions and supports, and other strategies
- Calls to parents
- Short term removals
- Restraint + seclusion used, even in BIP, must be documented under restraint + seclusion law
- Court held that Parents' agreement to the use of time-out room and hand-over-hand interventions to manage their daughter's problem behaviors did not excuse a district's overreliance on those techniques. *Waukeg Cmty. Sch. Dist. v. Douglas*, 51 IDELR 15 (S.D. Iowa 2008).

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Program for ...

- Lowest common denominator – don't program for the student on the random days he is medicated
- Data in front of you now (*Endrew F.*)
- Updated present levels + progress on goals is essential
- Can't program for what may happen
- Draft service minutes in reporting periods, not per day or per week
- Do NOT put specific methodology (i.e. PLATO, Orton-Gillingham, etc.) within the IEP. 511 IAC 7-42-5(b)(1)(A).
- Appropriate goals – Can Student really go from 10% to 100% in 1 year?
- Are goals changing year to year? DO NOT recycle IEPs.
- Avoid "maximize potential" or "best interest of child" standards

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Responding to Unique Requests + Concerns

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Service Animals

- Service animals are permitted under equal access of Section 504, not necessarily for FAPE reasons
- If presented with a request for a service animal ... don't ignore, don't deny, don't write into IEP

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Request for Service Animal in CCC

Bakersfield (CA) City School District, 50 IDELR 169 (OCR 2008).

Even if the dog did not qualify as a service animal, OCR observed, the district should have considered whether the dog's presence was necessary for the student to receive FAPE. OCR found that a California district violated Title II and Section 504 by excluding a student's dog from school. OCR noted that the district did not conduct a specific inquiry as to whether the dog was an appropriately trained service animal or whether its function addressed the student's disability-related needs.

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How *Fry* Affects Service Animals

Fry v. Napoleon Community Schools

- U.S. Supreme Court held that the parents of a 5-year-old girl with cerebral palsy may not need to exhaust their administrative remedies through IDEA before pursuing Section 504 and Title II claims against School that excluded their child's service dog from school
- If gravamen of complaint isn't denial of FAPE, then Parents can file discrimination claim in federal court for monetary damages

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Bullying Addressed in CCC

- IC 20-33-8-13.5 addresses bullying for all students
- Federal DOE issued Dear Colleague Letter re: bullying + disabilities
- IDOE says they will enforce federal bullying guidance
- Check district's bullying policy – reference to CCC decision?

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Allegations of Bullying

OCR Dear Colleague Letter *Bullying of Students with Disabilities*, October 2014

- Bullying of a student with a disability on any basis can similarly result in a denial of FAPE
- Under IDEA, as part of a school's appropriate response to bullying on any basis, the school should convene the CCC to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide a meaningful educational benefit

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Allegations of Bullying

Lessons from Caselaw

- CP-004-2017: After Parent pulled Student from school and presented Certificate of Incapacity for anxiety, IDOE investigated bullying on its own and found bullying substantiated
- *T.K. and S.K. v. New York City Dept. of Educ.*, 810 F.3d 869 (2d Cir. 2016) – A district's refusal to discuss bullying at CCC constituted a denial of FAPE. The refusal impeded the parents' participation, potentially impaired the substance of the IEP, and prevented parents from assessing adequacy of IEP.

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Responding to Bullying: Overheard at CCCs

School [when Mom suggested that Student should stay at home because "other people in class bother Student"]

TOR: Are there students directing things at you? Would you consider it bullying?

Student: No, they just goof around.

TOR: Are there any particular classes or students that are an issue?

Student: I don't want to go to lunch early because everyone makes fun of me when I leave class early.

TOR: Then maybe we need to discuss, as a CCC, how to adjust your schedule so you have plenty of time to eat lunch but don't feel awkward leaving class early.

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Outside Agencies

- Request for outside agency to work with Student during school day, or Student to be dismissed to outside agency (missing some school time)
- Ask Parents if they are requesting these services as part of FAPE?
- Has the Student been offered FAPE through an IEP?
- You've been put on notice that Parents feel these services are necessary

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IEP as Written Notice

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Educational Jargon

511 IAC 7-42-7(d): "The written notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so."

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Whatchu Talkin' About?

Woodcock Johnson
Elope
Mainstream
Age equivalency
Fountas & Pinnell

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Drafting IEP Notes

- 511 IAC 7-42-6(f)(11): IEP notes must include date & purpose of meeting, names & titles of participants, issues discussed
- 511 IAC 7-42-7(b): Written notice must include description of the action proposed or refused by School, explanation, description of each evaluation/procedure/assessment/record/report used as the basis for the proposed or refused action, other options the CCC considered and why they were rejected, and any other factors relevant to school's proposal or refusal

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How IEP Notes Count

- CP-121-2013: "[IDOE] has had a long-standing interpretation that if the notes reflect that services or other assistance is to be provided to a student, this is the same as if it's actually written into the applicable section of the IEP."
- HR-064-2017: "the School's case conference committee meeting notes need to reflect the contributions of all participants with greater fidelity."

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Easy IEP Note Tips

- Include start and end time (and breaks)
- "Procedural safeguards were provided; Parent accepted/waived."
- "Parents agreed."
- What options were discussed
- WHY and WHAT DATA was used to decide an option

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The Pros/Cons in IEP Notes

IEP Notes drafted by School:
 "CCC discussed a continuum of options for Student's services...
 [listed 6 options discussed, and how CCC honed in on 2 programs]
 CCC discussed the benefits and drawbacks of both programs:
 - [Program 1] classroom has younger children enrolled.
 - [Program 1] classroom has the same child with whom Student had inappropriate contact in past.
 - [Program 1] classroom is familiar to Student, has same teacher and classmates.
 - [Program 2] classroom only has other students in Student's grade level.
 - [Program 2] classroom has a therapeutic component with a full-time therapist and low student to teacher ratio. Curriculum can be adapted to students' needs.
 - [Program 2] classroom is an unfamiliar teacher and unfamiliar peer group to Student.
 CCC agreed Student would attend Program 2.

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Provide Final IEP on Day of CCC?
Probably not.

- Send home IEP in 10 days.
- Gives you a chance to correct typos, talk with team to ensure transportation/accommodations will work, etc. This is a legal document and Parents shouldn't be pressured to sign it on the same day. 511 IAC 7-42-7(c).
- "Sub test" – ask a different teacher to read through the IEP and see if they can understand everything before it's finalized

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Explain Timeline to Parents

Show Parents a calendar and explain timeline:

"Today is the CCC, then we have 10 business days to provide you the IEP, then you have 10 school days to exercise 1 of 3 options:

1. Return signed,
2. Challenge,
3. Nothing (11th day implementation)"

School cannot implement before 11th day without signature

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Thank you.

NOBLESVILLE | FISHERS | Tipton | MERRILLVILLE | ZIONSVILLE
