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CONFLICT RESOLUTION STRATEGIES IN THE IDEA

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I. Introduction

Our presentation will focus on the Alternative Dispute Resolution (ADR) provisions embedded in the Individuals with Disabilities Education Act (IDEA). We begin with the legal requirements and next we will discuss mediation and the strategies learned in that format and how they can apply in day-to-day special education situations with families, scholars and school staff.

II. Notice in the IDEA

- A. **Procedural Safeguards.** Educators must provide parents/guardiansⁱ with notice of the procedural safeguards at those times specified in the IDEA 2004 *and* at those times specified in Minnesota law.
1. **IDEA :** The IDEA requires that school districts provide parents with notice of the IDEA procedural safeguards (a) once a year, (b) upon initial referral *or parental request* for evaluation, (c) upon the *first occurrence* of the filing of a complaint, ***and*** (d) upon request by the parent.
 2. **Minnesota law:** In addition to the times specified in the IDEA, Minnesota Rule 3525.3900, subpart 1, requires that within two business days after receiving a request for a due process hearing, a district must

NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel.

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provide the parent with notice of the procedural safeguards, unless the district has already done so in the pending dispute. In addition, Minnesota law requires that such notice be provided whenever a district proposes to evaluate *or reevaluate* a student.

3. **Annual notice on district website:** A district may give the annual notice required under the IDEA 2004 by posting a copy of the Procedural Safeguards Notice on its internet website. 20 U.S.C. § 1415(d)(1)(B) (2004).

B. Prior Written Notice (PWN)

1. **IDEA 2004:** Under the IDEA 2004, a district must provide a PWN whenever the district proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.
2. **Minnesota law:** Under Minnesota law, a district must serve prior written notice on the parent within a reasonable time, but no less than 14 calendar days before the proposed effective date of the change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made. *See* Minn. Rule 3525.3600; *see also* Minn. Stat. § 125A.091, subdivision 3a.
3. **Content of the PWN;** IDEA requires 7 elements, Minnesota law requires an additional 4 elements.
 - a. **IDEA:** Under the IDEA, prior written notice must include the following:
 - a. A description of the action proposed or refused by the school district;
 - b. An explanation of why the district proposes or refuses to take the action;
 - c. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
 - d. A description of other options considered by the IEP team and the reason why those options were rejected;

- e. A description of the factors relevant to the district's proposal or refusal;
 - f. A statement that the parents of a child with a disability have protections under the procedural safeguards of IDEA 2004 and the means by which a copy of a description of the procedural safeguards can be obtained; and
 - g. Sources for parents to contact to obtain assistance in understanding the procedural safeguards of IDEA.
4. **Minnesota Law.** In addition to the requirements set forth in IDEA, Minnesota Rule 3525.3600 requires that the prior written notice:
- a. Inform the parents that the school district will not proceed with the initial placement and provision of services without prior written consent of the pupil's parents;
 - b. Inform the parents that except for the initial placement and provision of services, the district will proceed with the proposed placement and provision of services unless the parents object in writing on the enclosed response form or otherwise in writing within 14 calendar days after the receipt of the notice; and
 - c. Inform the parents that if they refuse to provide prior written consent for the initial evaluation or initial placement or object in writing to any propose, or if the district refuses to initiate or change the identification, evaluation, or educational placement or the provision of FAPE to the pupil, the parent may request a conciliation conference.
 - d. Note that the district must also provide the parents with a copy of the proposed IEP whenever the district proposes to initiate or change the content of the IEP.

III. Due Process Procedures in the IDEA and MINNESOTA LAW

- A. Two-year statute of limitations:** A complainant must file a complaint requesting a due process hearing setting forth an alleged violation that occurred not more than 2 years before the date that the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint. However, the time period for a parent to request a hearing may be tolled if the

district makes misrepresentations that it had resolved the problem, or the district withholds information from the parent that it is required to provide in accordance with the IDEA. 20 U.S.C. § 1415(b)(6)(B) (2004); 20 U.S.C. § 1415(f)(3)(C), (D) (2004). There has been significant litigation regarding when the two-year begins and whether continuing acts toll the statute of limitations. *See Indep. School Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073 (8th Cir. 2020).

- B. Resolution Session:** Before a *parent-initiated* due process hearing, the district must convene a preliminary meeting with the parents to attempt to resolve the dispute. 20 U.S.C. § 1415(f)(1)(B)(i) (2004). This meeting is held (1) to allow the parents of the student to discuss their complaint; (2) to discuss the facts that form the basis of the complaint; and (3) to allow the district to resolve the complaint. *Id.*
1. **When must the resolution session occur?** Within fifteen days after the receipt of the parent’s complaint. 20 U.S.C. § 1415(f)(1)(B)(i)(I) (2004).
 2. **Who participates in the resolution session?** Parents, relevant member or members of the IEP team who have knowledge of specific facts identified in parent’s complaint, and a representative of district who has decision-making power on behalf of the district.
 - a. Under the proposed regulations, the parents and the district determine the relevant members of the team who should attend the resolution session.
 - b. The district may not bring an attorney to the resolution meeting if the parents have not brought an attorney to the meeting. 20 U.S.C. § 1415(f)(1)(B)(i)(III) (2004).
 3. **What happens if an agreement is reached during the resolution session?** The parties must execute a legally-binding agreement that is signed both by the parents and the representative of the district. Either party may void the agreement within 3 business days of the execution of the agreement. Thereafter, the agreement is enforceable by a state court or a federal district court. 20 U.S.C. § 1415(f)(1)(B)(iii), (iv) (2004).
 4. **Can the parties waive the resolution session?** The resolution meeting can be waived if both the parents and the district agree in writing to waive the meeting, or both the parents and the district agree to mediation under the IDEA. 20 U.S.C. § 1415(f)(1)(B)(i)(IV) (2004).

5. **Non-attendance.** In some cases, hearing officers have dismissed a parent's due process hearing request because the parent failed to attend the scheduled resolution session.
6. **Are the resolution session and any resolution offers confidential?** No. A resolution session and the resulting offers are not confidential. The parent and the district may agree to make discussions confidential. 71 Fed. Reg. 46,704 (2006); *Letter to Baglin*, 53 IDELR 164 (OSEP 2008); and *Dispute Resolution Procedures under Part B of the Individuals with Disabilities Educ. Act (Part B)*, 61 IDELR 232 (OSEP 2013).

Absent an agreement to keep resolution confidential, either parent or district may introduce those discussions as evidence during a due process hearing. *Letter to Cohen*, 67 IDELR 217 (OSEP 2015).

B. Conciliation Conference.

A parent must have an opportunity to participate in a conciliation conference if the parent objects to a proposed evaluation, placement, or IEP. Minn. Stat. § 125A.091, subd. 7. Minn Admin R 3525.3700 subp. 1a. Statements made during a conciliation conference must remain confidential and may not be admitted in evidence in a due process hearing; however, the memorandum provided five days after the conference may be admitted.

Within five school days after the final conciliation conference, the district must provide the parent a conciliation conference memorandum that describes the district's final proposed offer of service. The memorandum and IEP are admissible evidence in a due process hearing. Minn. Stat. 125A.091, subd 7.

- C. **Mediation.** In addition to offering a conciliation conference, the district must inform parents of other ADR including mediation and facilitated meetings. Minn. Stat. § 125A.091, subd. 8. Mediation is voluntary. Mediation discussions are confidential and may not be admitted in a due process hearing or other legal proceedings. The mediation agreement is enforceable in state or federal court and a party may ask for another mediation to resolve a dispute over implementation of the agreement. *Id.* at subd. 10.
- D. **Facilitated Meeting.** A state-appointed facilitator may be used to promote efficient communication and to assist the IEP team to develop an IEP. *Id.* at subd. 11.
- E. **Due Process Hearing.** Parents or a district may request a due process hearing before an administrative law judge appointed by the Minnesota Department of Education. Issues to be heard may include identification, evaluation, educational placement, manifestation determination, interim alternative placement, or the provision of a free appropriate public education (FAPE).

- F. Expedited Hearing.** May be required by either party consistent with federal law. The hearing is generally regarding unilateral removal and alternative education programs.
- G. State Complaint Process.** Parents are entitled to file a complaint with MDE.
- H. Other Voluntary Processes.** The parents and school district are encouraged under Minnesota law to consider other voluntary forms of resolving a dispute.

IX. Conclusion

A clear and comprehensive IEP is the basic component in the provision of FAPE to a student with a disability. The IEP is a school district's most important piece of evidence in the event of a dispute over the propriety of a disabled student's education. A well-drafted IEP heightens a school district's chance for success in a legal battle. By taking the time to develop a IEP thoughtfully and carefully, a school district can limit the possibility of future liability while ensuring appropriate programming for student with a disability.

But, the IDEA 2004 creates significant changes to both the structure and substance of the law, causing uncertainty to the IEP process. The whole effect of the new law on Minnesota school districts will not be clear until the federal regulations and state law and rules implementing this new law are in place. As of the date of this presentation, new federal regulations have been proposed, but have not yet been finalized (currently scheduled to be issued in December 2005). The state legislature and MDE have given no indication on when and if revisions to the state special education law will occur.

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ⁱ In this outline, we use the term "parents" to include biological and adoptive parents, legal guardians and students who are 18 years of age or older.