

Ask the Advocate... by Desiree Vandelac Special Education Advocate/Legal Assistant

Question: Is it okay for school personnel to meet without the parents present and discuss agenda items for an IEP meeting before the IEP meeting?

Answer: It is very common for school personnel to meet before an IEP meeting to discuss issues that will be covered in the IEP meeting and there is nothing in IDEA that prohibits this practice. However, school personnel cannot make any changes to the IEP nor can they make any decisions about changes to the IEP without the parents' meaningful participation. IDEA requires that parents participate in the IEP process in a meaningful way, that they are equal members of the IEP team and as such they have an equal voice in the IEP process. Therefore, it would be inappropriate for school personnel to make any decisions without the parents being part of the discussion and decision making process.

For example, Suzie is a child with an IEP. She is failing to make progress academically and beginning to have serious behavior problems that are posing a safety risk to herself and others. An IEP meeting has been scheduled to discuss changing Suzie's placement to a more appropriate and therapeutic setting. School personnel may meet before the IEP meeting to discuss the type of placement they believe Suzie needs and possible alternative placements so that during the IEP meeting they can present Suzie's parents with a selection of placements they believe would meet Suzie's needs. However, it would be a violation of IDEA for school personnel to meet before the IEP meeting and make a final determination of a change in placement for Suzie and then simply inform Suzie's parents during the IEP meeting of their decision. If school personnel meet prior to the IEP meeting the purpose of the meeting must only be for planning to help facilitate the IEP meeting not to make any final decisions.

Question: I have a friend who speaks limited English and her child has an IEP. My friend has a difficult time understanding and following what is being discussed in IEP meetings. In the past I have attended IEP meetings with her to help her comprehend what is being said but I can't do this any longer. What can my friend do so she actually understands what is happening at the IEP meetings?

Answer: IDEA requires that parents be allowed meaningful participation in the IEP process, including during IEP meetings. In this circumstance a language barrier is preventing your friend from meaningfully participating in the IEP meeting (it is not enough to simply attend the meeting). Your friend needs to write a letter to the IEP team explaining that the language barrier is prohibiting her from meaningfully participating in the IEP process. She needs to request that all IEP and other school documents be provided to her in her preferred language and that the school provides her with an interpreter during the IEP meetings. The school must then provide her these accommodations at no cost to the family. If your friend is unable to write in English she should write the letter in her preferred language. If she is concerned that the school does not have personnel able to read and understand her letter she may provide them with an English interpretation attached to her original letter. The English interpretation should note the name and contact information

of the person providing the translation. In addition, your friend should tape record all of her IEP meetings. Taping the meetings will allow her to review what was said during the IEP meeting, in case she (or her interpreter) missed something that was said.

Question: We just received a letter from the school about our son's placement. They told us that the district has a new Autism program with a self-contained classroom at another school and our son is being transferred to this new program next month. Currently our son has an IEP and attends our neighborhood public school. He is in a combination of special education and regular education classrooms. We do not support changing our son's placement. We prefer that he attend our neighborhood school (the new school would require a 20 minute bus ride). How can we prevent our son from being moved to this new school?

Answer: First you need to write a letter to the IEP team documenting this issue and stressing that you do not support this change in placement. Your letter should also document the fact that the school made a unilateral change in your son's placement without having an IEP meeting and without your participation or input. Changing your son's placement is making a change to the IEP.

IDEA requires that an IEP meeting be held prior to any changes to an IEP (including placement) unless all parties agree not to convene an IEP meeting and agree instead to develop a written document to amend or modify the current IEP. Request all information, evaluations and documentation the school used to determine the need to change your son's placement and find out the reasons they believe your son should be moved to this new program. You will also need to request an emergency IEP meeting to discuss your child's placement and as a team decide if his placement should be changed or not.

An IEP is an Individual Education Plan therefore the school cannot make a change in placement simply because there is a new Autism program and that is where they intend to place all children with Autism. IDEA requires schools to place children in the least restrictive environment that is appropriate for that child. If your son is doing well in his current placement and is receiving meaningful benefit from his education there may be no reason for him to change schools. You may need the assistance of an advocate or an attorney to ensure that the school does not transfer your child to the new placement without your consent. Wrightslaw: From Emotions to Advocacy states, "Decisions about the child's placement cannot be made until after the IEP team, including the child's parent, meets and reaches consensus about the IEP goals. Although the law is clear on this issue, school personnel often decide on the child's program and placement before the IEP meeting. These unilateral actions prevent parents from "meaningful participation" in the educational decision-making process. When Congress added this provision to the IDEA in 1997, they sent a message that *unilateral educational placement decisions by school officials are illegal.*" (emphasis added)

(Continued on page 4)





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However, if your son is not benefiting from his current placement (i.e. he is not learning) it would be worth your time and effort to look into the placement the school is proposing. It is possible that the Autism program may provide your son services that he does not and cannot receive at his current placement, such as integrated social skills programming. Do not dismiss the proposed placement out of hand, take the time to really investigate the placement and determine if it would be appropriate for your son. Look at your long-term goals for your child. Does his current placement support those long-term goals? Would the new placement in the Autism program allow your child to learn more and make more progress? It's not uncommon for parents to resist a change in placement from the general education classroom and their neighborhood school because it reinforces the fact that their child is different from their peers and this can be very difficult for parents especially if their child has only recently been diagnosed with Autism. Remember, the ultimate purpose of your child's placement is for them to learn, to obtain an education—not simply spend the day in the same classroom as their neighborhood friends.

Send questions via email to advocate@autismboulder.org While I cannot respond directly to you, I will try to answer all of your questions in this column.

Desiree Vandelac is a Special Education Advocate and Legal Assistant for the Law Offices of Louise Bouzari, and mother of an Asperger's child.

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Law Offices of Louise Bouzari, LLC
7887 E. Belleview Ave, Suite 1100
Englewood, CO 80111
(303) 228-1616

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Ask the Advocate[®] is not intended to, nor does it provide, legal advice. Rather its purpose is to provide general information to help parents improve their own advocacy skills in the IEP process. It is recommended you consult with an attorney who specializes in special education law for legal advice, specific advice and guidance that is tailored to your particular circumstances, or if you want professional assurance that our information (and your interpretation of it) is appropriate for your particular situation.

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