Dynamic Dialogue and Deliberations

Denise Hays and Jamie Turner
Walsh Gallegos Treviño Russo & Kyle
Dynamic Dialogue & Deliberations

Presented By:
Denise Hays & Jamie Turner
Attorneys-at-Law

The Minutes Should Reflect Compliance with Salient Underlying Court Decisions

1. Did the school district comply with procedural requirements of the IDEA & accompanying regulations?
2. Is the IEP reasonably calculated to enable the student to receive an educational benefit?

PLUS now clarified by U.S. Sup Ct in Endrew

Student Profile: Educated in regular classrooms of public school system, she performed better than the average child, advancing from grade to grade

So, What Was FAPE According to Rowley?

1. Did the school district comply with procedural requirements of the IDEA & accompanying regulations?
2. Is the IEP reasonably calculated to enable the student to receive an educational benefit?

PLUS now clarified by U.S. Sup Ct in Endrew

Student Profile: Educated in regular classrooms of public school system, she performed better than the average child, advancing from grade to grade
What Was the FAPE Standard According to Endrew?

- “Some educational benefit” standard from Rowley did not work in Endrew
- IEP Instruction must be specially designed to meet a child’s unique needs
- IEP must be reasonably calculated to enable the child to make progress (appropriately ambitious) in light of his circumstances

Student Profile: student with Autism, behaviors interfered with progress, not in general ed setting

What are the 4 Factors of FAPE

1. An individualized program based on the student’s assessment and performance,
2. That is administered in the least restrictive environment,
3. The services are provided in a coordinated and collaborative manner by the key stakeholders, and
4. There are demonstrated positive benefits both academically and non-academically

What, Does This Mean the U.S. Sup. Ct. Shifted the Standard to Maximizing Potential?

No!

In the Rowley decision the U.S. Supreme Court says not required to maximize benefit

In the Endrew decision the U.S. Sup. Ct. rejected that standard requested by parents “is an education that aims to provide a child with a disability, opportunities to achieve academic success, sustain self-sufficiency, & contribute to society that are substantially equal to the opportunities afforded children without disabilities.” U.S. Sup. Ct. says that is “plainly at odds with what was decided in Rowley.”
The Minutes Should Reflect the Right People Were There

- A reminder of the required ARDC members
  - Parent
  - Regular Education Teacher
  - Special Education Teacher
  - District Representative
  - Individual Who Can Interpret Assessment
  - Other Individuals Requested by the Parent or Agency with Knowledge
  - The Child with a Disability, When Appropriate

34 CFR §300.321

Practical Pointers: ARDC Participants

- Send attendance sheet around at the beginning for people to record names & position, and attach it to the minutes
- If persons who are not required members of the ARDC arrive after the ARD begins, or leave before the ARDC meeting ends, record in the minutes
- Always document parent agreements to excuse a required member of the ARDC
- Note name & position of folks the parent may bring

Are Attorneys or Advocates Required Members of the ARDC?

It just seems like it.

Keep in mind a parent can bring to the ARDC meeting other individuals who have knowledge or special expertise regarding the child.
The Minutes Should Reflect District Efforts to Cooperate & Collaborate With the Parents

THREE KEY POINTS

Participation

Meaningful Input

Collaboration

What is the Fifth Circuit Guidance on Collaboration With Parents?

In Cypress Fairbanks ISD v. Michael F, one of the 4 Factors of FAPE is that the services were provided in a coordinated & collaborative manner by the key stakeholders.

What Steps Should the District Take to Ensure Parent Participation?

• How Should ARD Minutes Document This?
  – Document all efforts on ensuring parent participation in the ARD consistent with 34 CFR §300.322
  – If participating by phone or videoconferencing note it in the minutes
  – If parent declined to participate in ARD meeting, after notice, & requested the District to proceed, then this should be clearly noted.
What is the U.S. Supreme Court’s Position on Parent Involvement in the IEP Process?

• “The core of the statute, however, is the cooperative process that it establishes between Parent and schools. School Districts have a natural advantage in information & expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of Parents and to share information with them.” Schaffer v. Weast, 126 Sup. Ct. 528, 536 (2005)

And What Did Congress Say About Parental Involvement?

...The Act and those regulations encourage parental input & involvement in all aspects of a child’s educational program & provide many opportunities for Parents to provide information, that becomes part of the child’s educational record.

Comments to IDEA, Federal Register, VOL. 71, No. 156, page 46688 (Aug 14, 2006)

What if the Parent refuses to attend the ARDC meeting, what should the minutes reflect?

Can we proceed? **Yes. BUT...**

Compliance with 34CFR §300.322 is CRITICAL (Notification of ARD, scheduling at mutually agreed on time & place)
What if the Parent refuses to attend the ARDC meeting, what should the minutes reflect? (continued)

- Record of Attempts
- Attempt to call immediately prior to the ARD
- Detailed records of telephone calls/Attempts
- Offer telephone or video participation
- Copies of correspondence to Parents
- Detailed records of visits

Is it O.K. to note the District had a staffing prior to the ARDC meeting, without the Parent?

- Absolutely

  - Meetings do not include informal or unscheduled conversations involving District personnel, or issues such as teaching methodology, lesson plans, or coordination of service provision, or preparatory activities that the District engages in to develop a proposal or response that will be discussed at a later meeting. This means Parents do not have a right to attend staffings prior to ARDC meetings.  
    34CFR §300.501(b)

Is it O.K. to note the District had a staffing prior to the ARDC meeting, without the Parent? (continued)

- Staffings to prepare proposals for an upcoming ARDC meeting, draft goals, present levels often lead to more efficient ARDC meetings. Just watch out for predetermination. 
- Document steps to ensure parents had an opportunity for participation in development of IEP prior to the ARDC meeting, but label draft documents as DRAFT.
What is Contemplated by Meaningful Participation?

- “Meaningful Participation” is not the right to a line item veto
- The District does not have to adopt the parent’s recommendations, but it does have to consider them. Meaningful participation means the ability to participate in the process, not the right to dictate an outcome.

White v. Ascension Parish 343 F. 3d 373 (5th Cir. 2003)

- Don’t force the school’s position without considering other options

Have Courts Ever Acknowledged a Parent’s Unwillingness to Collaborate?

YES!

- In Rockwall ISD v. M.C. 67 IDELR 108 (5th Cir. 2016)

The Practical Implication is that the written record of the ARDC meeting is critical. In this case, the ARD minutes, testimony, letters & emails from the District enabled the Court to conclude that the District took a “collaborative approach” to the IEP whereas “the record shows that the Parents had no intention of continuing with the ARDC unless RISD approved their proposal.”
Assume We have Documented Parent Participation, Meaningful participation, but the Parent Disagrees?

- The law contemplates disagreement & has a detailed responsive process
- Prior to folding for a “total” disagreement, make sure you have clearly documented the areas with which the parent disagrees.

---

General Considerations Regarding ARDC Deliberations:

- **Practical Pointers**
  - Do not permit parents or advocates to direct ARD or minutes
  - The ARD record should reflect every evaluation considered by the ARDC
  - State any areas of disagreement & summarize in ARD minutes
General Considerations Regarding ARDC Deliberations:

- Practical Pointers (continued)
  - Do written minutes, don’t rely on a tape recording.
  - Make the minutes reflect the agenda.
  - Don’t try to do a blow-by-blow.
  - Summarize the issues discussed, the positions taken, the parent’s requests, the District’s response, and your action plan.
  - Stick to the facts. Avoid vague conclusory statements.
  - Distinguish District’s offer of FAPE and offer of enrichment activities.
  - Summarize District’s proposed program or create action plan at the end.
  - There is no requirement to read minutes aloud at the end of the meeting.
  - Remind parents ARDC Committee seeks agreement to program, not minutes.
  - Identify any parent edition as a parent addendum.
  - There is no legal requirement to prepare minutes. Remember minutes are not legally required. This could be a distraction to meaningful dialogue.

General Considerations Regarding ARDC Deliberations:

- Practical Pointers (continued)
  - Keep administrative reasons out of the minutes
  - Stay evaluation & child centered, do not compromise professional judgement
  - Note District offers & parent’s acceptance or rejection of offers
  - Key Guideposts – purpose, current progress, parent input, regulatory reg. & action plan
  - Action plan in minutes should be consistent with PWN