



EVALUATIONS: THE RUDDER THAT STEERS THE SHIP

Presented by:
JIM WALSH

WHY?

- All decisions about the content of a student's IEP and the placement in the LRE should be based on "evaluation data."
- So evaluation data steers the ship. It's the rudder.
- This is one of the primary reasons that special education is different from every other aspect of school operations. It's upside down.



HUH?

- Public education operates (mostly) top down.
- Decisions come from the top based on budget, personnel allocation, resources, management concerns, etc.
- But in special education, top down decision making leaves the district vulnerable.
- It's “upside down” in special ed.

EXAMPLES?

- The district creates a one-size fits all ESY program.
- Special ed kids leave 15 minutes early every day because we don't have enough buses.
- We put a ceiling on certain services.
- The principal dictates what the IEP Team will do without reference to the evaluation data.

**LET'S SAY IT
AGAIN....**

- **All decisions about IEP content and placement should be based on evaluation data specific to this child.**
- **This means amount of services, including related services.**
- **Because of this, there is a safe, legally defensible response to just about any parent request.....**

ONE SIZE FITS ALL RESPONSE

- “We will have the IEP TEAM review the EVALUATION DATA to see if your child NEEDS [whatever the parent just asked for] in order to receive FAPE.”
- Four key elements in that response:
1) IEP Team; 2) Evaluation data; 3) Need; 4) FAPE.
- It tells the parent 1) who will decide, 2) on what basis, and 3) with what standard.

“EVALUATION DATA”

- **This term refers to any and all information that is relevant to the student and his/her performance in school.**
- **It includes the FIIE, any formal reevaluation, reports on progress on previous IEPs, standardized test scores, report cards, attendance records, input and recommendations from teachers and other service providers.**

PARENT REQUESTS EVALUATION: WHAT TO DO?

- When the parent requests an evaluation there are only two legally defensible responses.
 - ✓ “Here is our consent form, along with the Procedural Safeguards document.”
 - ✓ “Here is our Prior Written Notice, explaining why we are not going to do the evaluation, along with the Procedural Safeguards document.”

CONSENT

- Remember that you don't have consent unless you have provided information about the evaluation in the parents' native language.

CHOOSING THE EVALUATORS

- The school chooses the evaluators. One Circuit Court said “we hold that there is no exception to the rule that a school district has a right to test a student itself in order to evaluate or reevaluate the student’s eligibility under IDEA.” *Andress v. Cleveland ISD* (5th Cir. 1995).

PARENT REFUSES TO CONSENT

- If this happens for **INITIAL** evaluation, the school **MAY** but **DOES NOT HAVE TO** request a hearing to override the parent. 34 CFR 300.300(a)(3).
- Same rule applies to re-evaluations, but the re-eval can be conducted without parent consent if the parent fails to respond after “reasonable efforts” to obtain consent.

OUTSIDE REPORTS

- Parents may bring to the school many types of reports from qualified people outside of the school—doctors, BCBAs, speech therapists, dyslexia experts, psychologists, etc.
- Consider a three-step response.
 - ✓ First: say thank you.
 - ✓ Second: seek consent to follow up.
 - ✓ Third: mild cross examination.

MILD CROSS EXAMINATION?

- When did you see the child?
Where? How long? Who else was present? Any formal testing? Ever observe in school?
- Talked to any of the teachers?
Reviewed current IEP, grades, progress reports?
- You are simply trying to establish the foundation for the opinions and recommendations made to the school.

IEEs

- Parent can obtain an Independent Educational Evaluation if parent disagrees with district's evaluation.
- District must pay for the IEE unless it 1) proves in a hearing that its evaluation is appropriate; or 2) the IEE fails to meet district criteria.
- If requesting a hearing, you must do so “without unnecessary delay.”
34 CFR 300.502(b)(2).

WHAT TO DO WITH AN IEE

- An IEE should always be considered by the IEP Team.
- “Considered” does not mean that all IEE recommendations are accepted.
- School staff should be prepared to explain why some recommendations were accepted and others were not.

WHEN THE EXPERTS DISAGREE

- Look for which evaluation is built on a more solid foundation.
- Most of the time this will favor the evaluation conducted by the school personnel.

FINALLY...

- Conducting a new evaluation is a good thing to do when you don't know what to do.
- Example: student is doing poorly; we have tried a variety of things; teachers are frustrated; parents are angry.
- Gather new evaluation data. If nothing else, this shows good faith on the part of the district.

JIM WALSH

Austin Office

P.O. Box 2156

Austin, Texas 78768

Phone: 512-454-6864

Fax: 512-467-9318

Email: jwalsh@wabsa.com

Web: www.WalshGallegos.com

Twitter: <https://twitter.com/JWalshTxLawDawg>



The information in this handout was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

