

EVALUATIONS: THE RUDDER THAT STEERS THE SHIP

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- 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.



- 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.



- 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

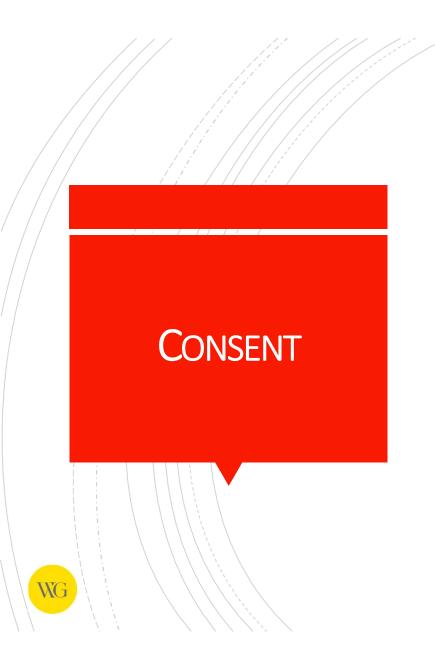
- "We will have the IEP TEAM review the EVALUATION DATA to see if your child NEEDS [whatever the parent just asked for] in order to receive FAPE."
- Four key elements in that response: 1) IEP Team; 2) Evaluation data; 3) Need; 4) FAPE.
- It tells the parent 1) who will decide, 2) on what basis, and 3)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



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

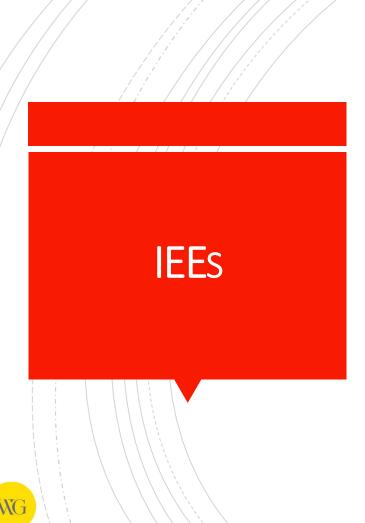
- If this happens for INITIAL evaluation, the school MAY but DOES NOT HAVE TO request a hearing to override the parent. 34 CFR 300.300(a)(3).
- Same rule applies to re-evaluations, but the re-eval can be conducted without parent consent if the parent fails to respond after "reasonable efforts" to obtain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



- 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.



- 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.

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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.

