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THE ADMINISTRATOR'S ROLE IN THE ARD PROCESS

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When Congress enacted federal legislation dealing with special education, one of its goals was to be sure that parents played a significant role in the educational process. Educational decisions were to be made on a case-by-case basis by a small group of people. The parents would always have the opportunity to participate in the process.

What has emerged as a result of that Congressional goal is what we in Texas call the ARD (Admission, Review, and Dismissal) Committee meeting. Through the ARD process, school personnel and parents collaboratively plan an educational program for each child, designed to meet that child's unique needs. Since the ARD Committee is the basic decision-making body in special education matters, it is essential that school administrators understand the process, and particularly the role they are expected to play. This month's article will focus on those issues.

"I'M NOT THE SHARPEST BLADE IN THE DRAWER ON THIS STUFF!"

Special education is the most regulated, detailed, legally prescriptive aspect of school operations. School administrators often feel frustrated at the sheer volume of rules, interpretations, important court cases, and conventional wisdom

that permeate the area. While most school administrators are familiar with the basic requirements of the law, many of them have come through the ranks of regular education teaching, and thus, are not as familiar with the fine points of the law as other staff members may be.

In fact, one administrator confessed in frustration that "I'm not the sharpest blade in the drawer on this stuff, ya know! Lots of these parents know this stuff better than I do!"

Indeed they do. It is not unusual for a parent to show up at an ARD meeting with yellow stickies protruding from every other page of some weighty tome for ready reference in the heat of battle. Besides confronting well versed parents, the administrator also is likely to encounter staff members more knowledgeable than she about the discussion of the regulation interpreting the statute that arose from the celebrated court case from 1982, and other fine points.

In short, many administrators approach the ARD process with an inferiority complex based on the fact that others are more knowledgeable of the twists and turns of special education law. If the ARD meeting turns into a legal squabble, many administrators fervently will wish they had scheduled a teacher observation instead of an ARD meeting that day.

But we think that the administrator who serves as the administrative representative at the ARD meeting need not be the most knowledgeable of each subparagraph of each

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regulation. The administrator needs to have a basic understanding of the law, combined with an ability to lead.

THE REPRESENTATIVE OF THE PUBLIC AGENCY

What we in Texas call "the administrative representative" is described in federal law as "the representative of the public agency." Specifically, federal law says that the individualized education plan (IEP) team (ARD Committee, in Texas) must include:

A representative of the public agency who—

Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

Is knowledgeable about the general curriculum; and

Is knowledgeable about the availability of resources of the public agency. 34 C.F.R. 300.344(a)(4).

In other words, the person who serves as the representative of the school district must have certain credentials, must be knowledgeable of curriculum matters, and must know how the district gets things done.

What does it mean to be "qualified to provide, or supervise the provision of, specially designed instruction"? The term "qualified personnel" is actually defined in the federal regulations to mean "personnel who have met SEA [state education agency]-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services." 34 C.F.R. 300.23. Moreover,

the term "specially designed instruction" is taken directly from the federal definition of the term "special education." 34 C.F.R. 300.26. Thus, to be "qualified" to either "provide, or supervise the provision of, specially designed instruction" means that the person has the requisite credentials to either (1) provide special education instruction, or (2) supervise those who do. The administrative representative must have either special education certification or certification that authorizes the supervision of others.

As far as being "knowledgeable about the general curriculum," we think this simply means that the representative of the public agency has a basic understanding of the curriculum being used at the school for non-disabled students. This is not hard to figure out in Texas, where the Texas Essential Knowledge and Skills (TEKS) lays out the basics of each subject in each grade.

The requirement that the representative of the public agency be "knowledgeable about the availability of resources" in the district simply means that he or she knows how to get definitive answers on issues that arise in the meeting. Will the district provide transportation? Will the district authorize an assistive technology evaluation? Will the district retain an expert on behavior issues to train the new teacher? The representative of the public agency must be able to answer these questions. While some of the issues that arise in the ARD process may exceed the authority of the representative, he or she must know where to go within the district to get a definitive answer.

Indeed, being able to commit the district is a critical aspect of the administrator's job at the ARD meeting. In the Question and Answer section of the federal regulations, we find this:

Each public agency may determine which specific staff member will serve as the agency representative in a particular IEP meeting, so long as the individual meets these requirements. *It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.* Q and A 22 (emphasis added).

Thus, in addition to having the appropriate credentials, the administrative representatives must (1) be knowledgeable about the district's programs and curriculum, and (2) be able to commit the district's resources or find the person who can.

PROVIDING LEADERSHIP AT THE MEETING

We think that a strong leader at the ARD meeting accomplishes ten things.

1. The leader sets the agenda.

Most ARD meetings are for the purpose of establishing initial eligibility or conducting the annual review. These meetings have an established agenda. The Committee members review assessment data, establish eligibility, review the

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child's progress, develop an IEP, and place the student in the least restrictive environment. But the most contentious ARD meetings are the special meetings, called by the parent or the school for a special purpose. Perhaps the district is ready to propose a change in placement. Perhaps the parent has requested more extensive services. Perhaps there has been a serious discipline problem. These ARD meetings also should have an agenda. The representative of the public agency should determine what the agenda will be. In doing so, the representative should take into account parental input. Parents who are summoned to special ARD meetings without any input are less likely to find the process meaningful.

2. The leader insists that we stick to the agenda.

ARD is not supposed to stand for "Argumentative, Repetitive Discussion." And yet, many ARD participants, both parents and school personnel, report that meetings frequently degenerate into pointless, rambling, circular discussions leading nowhere. The representative of the public agency is the one to bring the discussion back on task.

3. The leader establishes and enforces reasonable time limits for the meeting.

ARD meetings are supposed to be held at a "mutually agreeable time and place." "Mutually agreeable" should refer to the time when the meeting begins, as well as the time that it ends. We have found that most school people, when attending an ARD meeting, have one overriding, primary thought on the brain: "When does this thing end?" If there is no end in sight, it is easy to lose focus. Parents have a right to "meaningful participation" in the process, but surely, the process can be meaningful and at the same time, limited to a specific amount of time. Indeed, Texas hearing officers have affirmed the right of school personnel to establish time limits for ARD meetings, so long as those limits provide adequate time for a full discussion of the issues. *Jimmy H. v. Grapevine-Colleyville ISD*, Dkt. No. 287-SE-594 (Aug. 1994).

4. The leader establishes and enforces reasonable behavioral expectations at the meeting.

The author of this article once called another lawyer "you Bozo" during the middle of an ARD meeting. Fortunately, the principal, who was serving as the administrative representative had the good sense to have us all take a break and regain our composure. Tensions sometimes rise at ARD meetings. The leader of the meeting must defuse those tensions and move the discussion on to productive areas.

If tension does not rise at the ARD meeting, boredom will. "Reasonable behavioral expectations" should include the notion that all members of the committee are on task.

5. Listen to the staff and parents before giving direction.

Battle scarred veterans of ARD meetings report that the administrative representative is typically the single most decisive voice in the ARD process. As one teacher told me, "Look—you can call this a collaborative process if you want. But when the principal says how it's going down, that's how it's going down."

That may be so. And if it is so, then it makes it all the more important that the administrative representative pay attention to the input of staff members. If the ARD Committee is to have a dictator, it is important that he or she be a wise and benevolent dictator. A child's IEP cannot be based on administrative convenience, financial concerns, or "the way we've always done things." The IEP must be based on the educational needs of the student. The people who are the most knowledgeable of those needs are the direct service providers (e.g., teachers, speech therapists, and counselors) along with the parents. Preparation for the role of administrative representative should involve careful attention to the input of the people who have had the most instructional contact with the student.

6. Make sure that any directives given are legally defensible.

Decisions made by ARD Committees can be challenged through the special education due process system. Parents who are unhappy with the outcome of the process have the right to ask for a hearing. Such hearing will be provided by an independent hearing officer who has the authority to order the district to change the IEP, the placement, or to provide compensatory services for past failures.

In short, the ARD process is both a communication vehicle, and a series of decisions that can be legally challenged. The leader will want to make sure that the decisions made are legally defensible. We said at the beginning of this article that the administrative representative need not be "the sharpest blade in the drawer" when it comes to the fine points of the law. But to serve as the leader of the meeting, he or she will at least need to know where to go for advice when legal issues arise.

7. Make the district's commitments clear to the parent.

One of the most frequent problems arising from the ARD process is a mis-communication between school and parents. Parents often conclude that the school has made commitments and then reneged on them. School officials sometimes believe that parents are mistaken as to what commitment was made in the first place.

It would serve everyone's interests to be crystal clear about commitments before leaving the table. The IEP documents themselves are supposed to contain a clear road map for the child's educational program and a clear expression of district commitments. But the fact of the matter is, most IEP documents are confusing and complex.

Another problem with commitments made at ARD meetings is that, oftentimes, no one takes personal responsibility for the commitment. Someone suggests that Jason should have an evaluation of his need for an assistive technology device (ATD). Everyone nods. The ARD "minute taker" notes that "Jason should have an ATD evaluation." But it never gets done.

To avoid these problems, some districts now use a "Promise List" or a "List of Proposed Services." There already is too much paperwork in the ARD process, but we believe that this simple device will save more trouble than it will create. It clearly states (1) what the district has promised to do, (2) who will take personal responsibility for it, and (3) what the deadline is for fulfilling the promise. Whether the district chooses to use the "Promise List" or not, the leader of the meeting should see to it that the district's commitments are clear and are carried out.

8. Take the lead in making sure that the parent has a meaningful opportunity to participate.

The leader of the meeting should be the first to jump in when it appears that the parent may not understand what is going on. Many parents are confused or intimidated by the ARD process. They are expected to participate in a meaningful way, but they cannot realistically do this if they do not understand what the process is about and how it works. The leader should be the one member of the team most attuned to parental input.

Certainly, this includes being aware of issues arising from limited English proficiency. Last session, the state legislature adopted a law that requires IEPs to be translated into Spanish for Spanish speaking parents who are unable to speak English. If the parents' native language is neither English nor Spanish, the school must make "a good faith effort" to provide a translation. Texas Education Code 29.005.

But if the IEP is incomprehensible in English, this law might do nothing beyond providing IEPs that are "Bi-Incomprehensible." The real task is to translate the jargon and educational flotsam and jetsam into terms that anyone can understand in whatever language they speak. That is the task of the leader.

9. Take the lead when the ARD is in non-consensus.

From a legal perspective, this is probably the leader's most important role, and we will explore it in detail, below.

10. Stay.

As Woody Allen once said, 90% of success is just showing up. The "representative of the public agency" is a required member of the ARD Committee, meaning that he or she should be there from beginning to end. Besides, it is difficult to be the leader by remote control.

HANDLING THE NON-CONSENSUS ARD

The most challenging aspect of leadership at the ARD meeting is handling the ARD in which the school and the parents cannot reach consensus. In Texas, we have adopted a rule that requires, in most instances, that the parent be given an opportunity to have the committee recess and re-convene:

When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. 19 T.A.C. 89.1050(g)(1).

The recess is not required when the student has committed either an expellable offense or an offense that might lead to placement in an alternative education program. Nor is it required when the student's presence on campus presents a danger of physical harm to the student or others. But in most cases, when the ARD fails to reach consensus, the first step should be to offer the parent a recess of the meeting.

If the ARD Committee recesses, re-convenes, and still fails to reach consensus, other paragraphs in our state rules come into play:

If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD Committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for this student.

When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.

When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in [the federal regulations]. 19 T.A.C. 89.1050(g) (4, 5, and 6).

Thus, for example, if the school has proposed a change in the child's placement, from the regular classroom to the resource room, but consensus is not reached, the school must make sure that its proposed change of placement is explained in writing prior to such change being implemented. Like-

