

Parental Participation in the Special Education Process: A Review of Circuit Court Holdings

from 1997-2011

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Introduction

The Individuals with Disabilities Education Act (IDEA) was originally enacted in 1975 and was designed to provide an education to students with disabilities. One of the primary goals of IDEA is to provide parents with procedural safeguard which allows them due process to resolve disagreements between them and schools regarding special education services (U.S. Office of Special Education, n.d.).

According to IDEA, conflicts between parents and schools can be solved through either due process or mediation. Mediation consists of an objective third-party working with the parent and the school to resolve the conflict. The process is voluntary and the state is responsible for the cost of mediation. If mediation is unsuccessful, the parent still has the right to due process (Manasevit & Maginnis, 2005).

Due process begins with either the parent or the school district filing a complaint against the other. The party receiving the complaint must respond to the complaint with the reasons why they are making their decision and the alternative options they considered. The parent and the school meet for a pre-resolution session in an attempt to resolve the conflict without due process. If the pre-resolution session is unsuccessful, then the due process will occur. During the due process hearing, both parties have the right to counsel, to present evidence, and to interview witnesses. The hearing officer cannot be employed by the school district or the State Educational Agency. The hearing officer must also be knowledgeable in regulations, provisions, and interpretations regarding IDEA. The hearing officer will make a determination in regards to the provision of a Free and Appropriate Public Education (FAPE). Both the school and the parent have the right to appeal the hearing officer decision to federal court (Manasevit & Maginnis, 2005). The first step is to appeal to the federal district court. If either party is not

Comment [sb1]: Use significant instead of primary because the primary goals of IDEA are to provide FAPE and LRE.

Comment [sb2]: For clarity, revise as follows, "...safeguards which protect parental rights and provide a system of due process for parents and schools to resolve disagreements regarding education services."

Comment [sb3]: ...through mediation (20 U.S.C. 1415(e); 34 C.F.R. § 300.506), resolution session (20 U.S.C. 1415(f)(1)(B); 34 C.F.R. § 300.510), or a due process hearing (20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D); 34 C.F.R. § 300.511).

Comment [sb4]: Should directly reference IDEA as this is a statutory guarantee.

satisfied with the outcome from the district court then the case can be appealed to the federal circuit court. Circuit court rulings that are not satisfactory to one of the parties can be appealed to the United States Supreme Court (Yell, 2012).

The purpose of the procedural safeguards is to guarantee parental participation in the special education process (Individuals with Disabilities Education Improvement Act, 2004).

However, some research indicates parents do not believe they are actively participating in the special education process (Childre & Chambers, 2005; Fish, 2006; Stoner, Jones-Bock, Thompson, Angel, Heyl, & Crowley, 2005).

Fish (2006) interviewed seven parents of students with autism about their perceptions of Individualized Education Plan (IEP) meetings. Parents reported they did not believe their input at the meetings was valued and their perception was they were not seen as equals. They also reported IEP meetings could be improved if school districts provided better education for parents about special education law. The parents reported that because the school system failed to educate them about special education law, parents needed to educate themselves to gain access to the appropriate services for their students (Fish, 2006).

Stoner et. al. (2005) interviewed parents of students who had received special education services starting with early intervention services that extended into school age. The parents reported finding access to early intervention services to be easy. However, when the student began to attend school, the parents described the IEP process as traumatic and confusing. The parents also reported having to fight with the school system in order to obtain services. Having to fight for services caused the parents to become distrustful of the school resulting in increased diligence to ensuring their student's needs were being met (Stoner, Jones-Bock, Thompson, Angel, Heyl, & Crowley, 2005).

Comment [sb5]: I think it would be helpful to consolidate all of this introductory language and to be sure to use the primary source (IDEA) to support the discussion of the legal rights of parents and schools.

Comment [sb6]: ... (IDEA, 2004).

Comment [sb7]: Insert a sentence here to clarify legal guidance from IDEA, e.g. "Parental participation is required in meetings regarding the identification, evaluation, and educational placement of the child (20 U.S.C. 1414(e), 1415(b)(1); 34 C.F.R. § 300.501)." I discourage starting a sentence with "However" – sorry I am a Strunk & White groupie. Consider this revision "In spite of the legal mandates, numerous researchers report that parents do not believe they are active participants in the special education process (...)."

While piloting an alternate IEP development program, Childre and Chambers (2005) interviewed parents of students with disabilities on their perceptions of the traditional IEP meeting. Parents reported that they believed their students were receiving the appropriate services but their input was not solicited and when offered, was seldom heard. The parents felt pressured to agree to the proposed IEP and that the IEP was completely written prior to the meeting. Parents also reported they did not understand the special education jargon that was used in the meetings. Finally, parents indicated they were not fully informed about the types of placements and services for which they were consenting (Childre & Chambers, 2005).

The research described above describes parents whose perception is that they are not able to meaningfully participate in special education decision making (Childre & Chambers, 2005; Fish, 2006; Stoner, Jones-Bock, Thompson, Angel, Heyl, & Crowley, 2005). The procedural safeguards of IDEA give parents who believe meaningful participation was impeded the right to due process (Individuals with Disabilities Education Improvement Act, 2004). When due process is not satisfactory, the school and the parents have the ability to appeal the due process decision in federal court (Yell, 2012).

Given the research demonstrates a lack of parental understanding of special education process, parents feeling strong-armed into making decisions, and the belief their voice is not heard in the IEP meeting, this paper will test the assertions of the literature against case law. This paper will review the rulings of federal circuit court cases regarding parental participation in special education to determine: how the court interprets IDEA in defining parental participation, identify the characteristics of cases where denial of parental participation is alleged, and to discuss how the court makes decisions regarding parental participation.

Comment [sb8]: This is not quite accurate if you read the specific mandates of the law and regs. Here is the regulation - § 300.507(a) (1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

Comment [sb9]: Revise for clarity and use primary source, "Following a final adjudication of the due process hearing, the school and parents may appeal an unsatisfactory ruling by the due process hearing officer, in a state or federal district court of the United States (34 C.F.R. § 300.516)."

Method

Cases regarding parental participation in special education decision making were found by searching *Lexis/Nexis* under the following terms paired with *special education: parent participation, mutually agreed, and child's parents*. An ancestral search of cases that were cited regarding parental participation was also conducted. The decision of the circuit court and analysis of that decision regarding parental participation in the special education process were the only part of each case that was evaluated.

The first criterion for inclusion was that the cases had to be decided at the circuit court level. The second criterion for inclusion was the case included a specific claim that parental participation had been violated. Cases where parental participation was only evaluated as part of a procedural analysis and was not part of the claim were excluded. Any case that preceded the 1997 reauthorization of IDEA was also excluded.

Results

The search yielded 13 cases from seven different circuits. The circuits represented were the third (n= 2), fourth (n= 1), sixth (n= 1), seventh (n= 1), eighth (n= 1), ninth (n= 5), tenth (n= 1), and the District of Columbia circuit (n= 1). The years of these cases were 2001 (n= 1), 2002(n= 1), 2006 (n= 2), 2007 (n= 1), 2008 (n= 1), 2009 (n= 2) and 2010 (n= 5).

The two themes that emerged regarding parental participation are cases where school districts fulfilled the procedural requirements of IDEA and cases where the school district violated the procedural requirements of IDEA regarding parental participation. Within the theme of school districts complying with IDEA are categories where the parent was inflexible on IEP decisions and where parents impeded the IEP process by failing to schedule meetings despite school district requests. The subtheme of inflexible parents is defined as parents who attend the

Comment [sb10]: As we work this paper into an article, here is the type of writing we want to incorporate: "Traditional legal research and analysis is used as the primary methodology for data collection and analysis in this study. In addition, policy analysis is incorporated as a complementary research methodology to enhance understanding and provide additional perspectives (Schimmel, 1996). The use of complementary methods is a well-recognized approach by education law scholars (Schimmel, 1996; Stefkovich & Torres, 2003).

Comment [sb11]: Rather than identifying themes, I suggest we focus on categories and patterns. E.g. the following might be a better way to explain the results. Two categories of judicial decisions emerged across the parental rights cases examined in this study. The first category of cases includes decisions in which the school district was adjudged to be compliant with the IDEA procedural requirements. A second category of cases includes decisions in which the court determines the school has violated the procedural requirements of IDEA. For each category, several factors appeared to be influential and to impact the final outcome in the cases examined.

IEP meetings but are unable to agree or compromise with the school district. Parents impeding the process are defined as parents who do not allow IEP meetings to occur by cancelling meetings and refusing to schedule IEP meetings.

School district prevails

Inflexible parents. The eighth circuit decided in *Lanthrop R-II School District v. Gray* (2010) that despite a technical violation regarding scheduling a meeting at a mutually agreed upon time and place between parent and school as required by 34 CFR § 300.345(a)(2), the IEP was not impacted and the student was not deprived of educational benefit. Gray's claim referenced 34 CFR § 300.345 (a) where parents of students with disabilities should be present at each IEP meeting. According to 34 CFR §300.345 (d) the school may proceed with a meeting if the school is unable to convince the parent they need to attend. Gray had attended four meetings between August and November of 2002 to include the meeting where the IEP for the school year was drafted. Further, when Gray was either unable to attend or refused to attend the meeting, the school offered the opportunity for participation by phone. Gray further claimed that the student was denied a FAPE for the 2004-2005 school year because the school would not agree that the student needed to be placed in a private school. The eighth circuit held that the student was appropriately placed in the public school setting. The claim the student was denied a FAPE because the school did not agree with the parent was not supported by the evidence.

The ninth district held that not allowing an independent evaluator access to observations does not constitute a procedural violation regarding parental participation in *L. M. v. Capistrano Unified School District* (2009). The student was placed in a program within the public school system. The parent contracted an independent evaluator to conduct observations of the public school program to determine the appropriateness for the child. The program had a policy that

Comment [sb12]: I like how you organized the following section and discussion of the cases. Great work overall with the analysis of these cases.

Comment [sb13]: Throughout paper, you need to correctly refer to the circuit courts and strengthen your explanations of cases by adopting clear and concise discussions of the cases. For example, this paragraph as revised would be "The Eighth Circuit Court decided that a student was not denied educational benefit nor was his IEP negatively impacted by a technical scheduling error when setting up the IEP meeting (*Lanthrop R-II School District v. Gray* 2010). Specifically, the court held that the school may proceed with an IEP meeting even though the school was unable to convince parents to attend, either in person or by phone. In this case, the parent..."

Comment [sb14]: There is a real skill in providing facts in manner that captures the essence of the case and key legal authority. So, the following is just an example for you to consider as you hone this skill: "The parent, Gray, claimed that her parental right to participate in the IEP meeting (34 CFR § 300.345 (a)) was violated when the school held an IEP meeting without the parent. According to the school, Gray had attended four meetings between August and November of 2002; and she was present when the IEP for the school year was drafted. Furthermore, the school made several attempts to include the parent in the meeting, even offering an opportunity for participation by phone, which the parent refused."

observations were limited to twenty minutes to prevent disruption. The evaluator completed one observation and did not return. The parents claimed a procedural violation based on California Education Code section 56329(c) which provides the parent the opportunity to gather evidence regarding the appropriateness of a placement. The observation was limited to 20 minutes which prevented the evaluator from gathering enough information resulting in the parents not being able to meaningfully participate in the IEP process. However, the evaluator testified she had gathered enough information in the first observation and the court also argued the evaluator could have returned for additional observations if deemed necessary. Therefore, though there was potentially a technical violation regarding equal access for independent evaluators, it did not deny educational benefit to the student.

The sixth circuit held in *Nack v. Orange City School District* (2006) that having a draft IEP at a meeting does not constitute a predetermined IEP. The student had received special education services at the school for several years. When he was moved to a more restrictive placement, the parent alleged that she was not allowed to meaningfully participate in the discussion regarding placement. The parent had attended several IEP meetings where placement was discussed and the school testified that her contributions were taken seriously. The parent disagreed with the school about the appropriateness of the placement for the student. However, the court ruled that the parent was unable to provide sufficient evidence that her contributions were not taken seriously and therefore a procedural violation had not occurred.

In *John Paoella, Sr. v. District of Columbia* (2009), the District of Columbia circuit held that parental disagreement with placement does not constitute a procedural violation. The parent was involved in the development of the IEP but wanted the school to fund private placement where the parent believed the student was making optimal progress. The school had identified

an appropriate placement within the district and the parent had an opportunity to observe that program. Referring to *Nack v. Orange City School District* (2006), the court held that disagreeing over the appropriate placement does not constitute a procedural violation regarding meaningful parent participation.

Parents impeding process. The fourth circuit held in *M. M. v. School District of Greenville County* (2002) that there is no procedural violation if the parents impede the IEP process. The parents and the school were negotiating the IEP for the 1996-1997 school year. After two meetings, the parents and the school failed to agree on an IEP and a third meeting was scheduled. The parents cancelled the third meeting and the school requested notification from the parents when they were ready to convene for the third meeting. The school never received notification from the parents and they did not receive any response to correspondence indicating the student's placement in a program was being held for the 1996-1997 school year. The student did not attend for the 1996-1997 school year and the parents did not file due process until 1998. The court held that the school performed due diligence in attempting to develop the IEP and there was no evidence the parents would ever agree to any IEP other than the initial one they proposed. Therefore, because the parents impeded the process and an appropriate education was available for the student in the public school, there was neither a procedural violation nor a denial of FAPE.

The seventh circuit ruled in *Hjortness v. Neenah Joint School District* (2007) that the school could proceed with the IEP meeting if the parents were impeding the process. Hjortness claimed that according to 34 CFR §300.52 (b) (2) that parents had the right to active and meaningful participation in the development and revision of the IEP. The parents claimed a procedural violation in the development of the IEP because they did not participate at every

meeting. However, the Hjortnesses did attend multiple IEP meetings. When the school attempted to discuss goals, the Hjortnesses focused solely on their belief the student could only receive FAPE at a private school. Eventually, the school had to develop goals for the student independent of the parents' participation. Though the court recognized this as a procedural violation, the student was not denied a FAPE. The court further explained that the Hjortnesses right to participate was not denied rather they availed themselves of that right because of their inflexibility and refusal to discuss anything other than placing the student at a private school.

The tenth circuit held in *Nicholas Systema v. Academy School District No. 20* (2008) that parents cannot claim their right to participate was denied when they unilaterally terminate the IEP process. The Systemas sought reimbursement for in-home services on the claim the school district failed to finalize an IEP for the 2001-2002 school year and therefore did not provide FAPE for the student. Several meetings had occurred to develop the IEP and the parents disagreed with the school and continued in-home services at their own expense for the 2001-2002 school year. The school began discussing the IEP with the Systemas for the 2002-2003 school year. The parents disagreed with placing the student in an integrated classroom and enrolled the student in a private preschool. The district finalized the IEP and the Systemas refused to sign it. The court cited *Hjortness v. Neenah Joint School District* (2007) and *M.M. v. Greenville* (2002) in deciding the parents had removed themselves from the IEP process before the school had finalized its offer regarding services. Therefore, the parents prevented themselves from meaningfully participating in the IEP process. The tenth circuit also held that the lack of a finalized IEP did not substantively harm the student.

The third circuit held in *D.S. v. Bayonne Board of Education* (2010) that the alleged deprivation of educational benefit had to be connected to the procedural violation. The parents

submitted the results of independent evaluations to the school and requested a meeting to update the IEP with the new information. The school district delayed their response but eventually an IEP meeting was convened. However, the parent did not agree with the IEP and refused to sign. According to N.J. Admin Code § 6A:14-2.3(h) if a parent refuses to sign an IEP and does not submit any alternatives or seek mediation or due process within 15 days of the IEP meeting, the IEP becomes effective. The court ruled that because the parent attended the IEP meeting, many of their suggestions were included, and the final IEP was presented to the parent, there was not a procedural violation. The court further explained the school's delay in responding to the initial request for a meeting could not be directly connected to a deprivation of educational benefit and the school therefore substantially complied with the procedural requirements.

The third circuit also decided parents could not claim a procedural violation when they were impeding the process in *C.H. v. Cape Henlopen School District* (2010). The student had been unilaterally placed in private school and during the 2005-2006 school year, the parents indicated potential that the student would be returning to the public school. Though there was some uncertainty about the return of C.H. to the public school, they determined it was necessary to evaluate C.H. and develop an IEP for him. The school district scheduled an IEP meeting for August 2006 and though they did not provide ten days notice, the parent signed a waiver that permitted the meeting to proceed on the scheduled date. The parent attended the meeting but due to scheduling conflicts for some of the IEP team members, the meeting needed to adjourn prior to the completion of the IEP. The school attempted to reschedule prior to the start of school but the parent was not available. A meeting date was determined after the start of school though the mother indicated she was not available that day. However, the mother agreed to tentatively schedule the meeting. The school district did not send written notification of the meeting.

Neither the parent nor a representative from the private school attended the meeting that occurred after the school year started. The parents unilaterally placed the student in a private school and sought reimbursement through a due process complaint for procedural violations that included failure to have an IEP on the first day of school and failure to notify the parents within 10 days of a scheduled IEP meeting.

The third circuit referred to the fourth circuit decision in *MM v. School District of Greenville* (2002) where the fourth circuit decided the lack of an IEP was the result of an uncooperative parent and not the failure of the school to attempt to develop one. Regarding the claim that the school failed to provide written notice, the third circuit referred to 20 U.S.C § 1415(a) which requires parents be notified to have the ability to participate in IEP decisions regarding their child. The intent of this requirement is to allow the parents to participate in IEP decision making. In this case, the mother signed a waiver of notification for the first meeting, attended the first meeting, and was aware of the second meeting despite not receiving written notice. Though the school should have provided written notification, this procedural violation did not deny the student FAPE. The third circuit further elaborated the purpose of the procedural requirement was to ensure parental participation and not as a vehicle for parents to obtain reimbursement for unilateral private school placement.

The ninth circuit held in *A.M. v. Monrovia Unified School District* (2010) that a school could proceed with an IEP meeting if they had performed due diligence to schedule the meeting at a mutually agreed upon time and place. A. M. had recently enrolled in Monrovia and the school wanted time to evaluate A. M. to develop an appropriate IEP. The school scheduled an IEP meeting at a mutually agreed upon time and place and the parents contacted the school several days prior to the scheduled date and cancelled. The school offered several options to the

parents to allow them to participate in the meeting and the parents requested to have the meeting scheduled several months later. The school was concerned about the timelines associated with having an IEP for a transfer student and proceeded with the meeting. The court cited 34 CFR § 300.322 (d) which allows schools to proceed without the parents if the school is unable to convince the parents of their need to participate in the IEP meeting.

Parents Prevail

The ninth circuit held in *Amanda J. v. Clark County Schools* (2001) that failure to include parents at eligibility meetings and to disclose the results of evaluations denied the student FAPE. The student was initially evaluated by the school and the parents requested a copy of the results. The parents received a summary of the results and the school held the eligibility meeting without the parents. The results of the evaluation indicated the possibility of Autism and the need for additional testing. The child was identified as having a Developmental Delay. The parents moved to a new school district and at the first IEP meeting in the new district they were given the results of the evaluation indicating the potential for Autism. The ninth circuit held that the failure to provide the parents with the results of the evaluations was a procedural violation according to 20 U.S.C. § 1415(b)(1)(A). The procedural violation of failing to provide the parents with the results of the evaluations prevented them from making informed decisions in the IEP meeting. Therefore, because the parents were unable to make informed decisions regarding the student in developing the IEP, the student did not receive FAPE.

The ninth circuit held in *Isadora Shapiro v. Paradise Valley Unified School District No. 69* (2003) that proceeding with an IEP meeting when the parents have requested it be rescheduled constitutes a denial of FAPE. The student had been attending a private school for several years as part of a grant. When the grant had expired, the parents requested for the school

to continue funding the student at the private program. The school had just gained approval to begin a program focused on the student's disability that year. Several meetings were held by the school to begin developing the IEP which the parents attended. The parents continued to request the private placement which the school district rejected. The parents filed a due process claim because they disagreed with the school's placement decision. The school scheduled an IEP meeting at the end of the school year and the parents indicated they were not available and requested it be postponed. The school proceeded with the IEP meeting without the parents and sent a copy of the finalized IEP to them. Citing 20 U.S.C. § 1401(a)(20), 34 CFR § 300.344(a)(3), and *Amanda J. v. Clark County School District*(2001), the court emphasized the importance of parental participation under IDEA. The school argued that according to 34 CFR § 300.345(d), if they could not convince the parents to attend, they could proceed without them. The ninth circuit rejected this argument on the basis that the parents had requested the meeting be postponed and did not refuse to attend. The procedural violations of failing to include the parent in the IEP meeting resulted in a denial of FAPE and the ninth circuit ordered reimbursement to the parents for the private school placement.

The ninth circuit also held in *Daniel Drobnicki v. Poway Unified School District* (2009) that proceeding with an IEP meeting after the parents have requested the meeting be rescheduled can constitute a denial of FAPE. The school had contacted the parent of a meeting date for an IEP meeting and the parent indicated they were unsure if they were available at the time. The parent did not return the meeting notice which would indicate whether or not they were available. The school made no further attempts to contact the parent regarding their availability. The school contacted the parent at the scheduled time of the meeting who requested it be rescheduled. The school proceeded with the meeting without the parent. Citing *Shapiro v.*

Paradise Valley Unified School District (2003) the court held that the school failed to demonstrate attempts to schedule a mutually agreed upon time and place for the meeting. The parents did not affirmatively refuse to attend which would have permitted the school to proceed without them. The court also found that both the parents' history of not attending meetings and their attendance at meetings after the IEP was developed were irrelevant. Citing *Amanda J. v. Clark County School District*, the court reasoned that procedural violations that result in the deprivation of educational benefits do not need to be evaluated for a substantive violation. The ninth circuit held that the failure to include the parents at the meeting where the IEP was developed resulted in the denial of a FAPE for the 2005-2006 school year.

Discussion

The courts apply a two step process to evaluating allegations regarding IDEA. The first step is to determine if a procedural violation occurred. The second step is to determine if the procedural violation resulted in the deprivation of educational benefit. If the procedural violation resulted in the deprivation of educational benefit then FAPE was denied and the parent prevails. However, if the court determines the procedural violation does not result in the deprivation of educational benefit, then the court holds FAPE was provided and the school prevails.

The results above summarize holdings from eight separate circuit courts. In cases where there was no precedent within the circuit, such as *Nicholas Systema v. Academy School District No. 20* (2008), the circuit reviewed the holdings of other circuits with similar situations to influence their decision. Given the themes and subthemes presented in the results, it could potentially be assumed that circuits not represented in the results would make consistent decisions in circumstances with similar facts.

Comment [sb15]: Tenth Circuit

Comment [sb16]: I think you might need to be clearer with this statement to make your point. E.g., "Thus, it is possible to predict that the decisions emerging from these eight circuits might be influential on future decisions and possibly adopted by the remaining circuits."

Though some of the cases predate IDEA 2004, one intention of IDEA 2004 is to develop a collaborative relationship between parents and schools (H. R. Rep. 108-77, 2003). Accomplishing collaborative relationships requires not only the effort of school personnel but also the effort of parents. The IDEA prohibits schools from predetermining the contents of the IEP prior to the meeting (Individuals with Disabilities Improvement Act, 2004). The purpose of prohibiting predetermination is to allow parents the opportunity to meaningfully participate in developing the IEP (Nack v. Orange City Schools, 2006). In order to establish a collaborative relationship, the parents should avoid predetermining the contents of the IEP prior to the meeting so that the school can meaningfully participate.

In many of the cases, parents sought reimbursement for private school tuition based on procedural violations. The court has consistently made it clear, particularly in *C.H. v. Cape Henlopen School District* (2010), the purpose of the procedural safeguards is to protect the rights of parents but procedural errors do not always result in the denial of educational benefit. Therefore, though the court acknowledges procedural errors in many of the cases, tuition reimbursement is actually granted in very few.

When parents impede the process by either cancelling meetings or refusing to schedule meetings they are essentially removing themselves from the IEP process. Though schools are responsible for due diligence in developing the IEP with the parents they are also responsible for the procedural timelines in the IDEA. A procedural violation can also occur if the IEP is finalized prior to the beginning of a school year. Therefore, the school is faced with weighing whether proceeding without the parent or not having an IEP prior to the school year has a greater likelihood of denying educational benefit for the student. Regarding parents who refuse to schedule meetings, 34 CFR § 300.322 (d) allows the school to proceed with the meeting if they

Comment [sb17]: Not sure about this statement, do you think parents were predetermining or were they being inflexible and seeking to dominate the IEP meeting rather than being open to a cooperative relationship.

are unable to convince a parent to attend. Some states have safeguards to ensure an IEP will be finalized if the parents refuse to sign and fail to offer alternatives. In *D.S. v. Bayonne Board of Education* (2002), the New Jersey Administrative Code allowed for the IEP to be finalized despite the parent's failure to sign.

The criteria for the ability to proceed with an IEP meeting without the parents emerged through several of the holdings. According to 34 CFR § 300.345(a)(2) the IEP meeting must be scheduled at a mutually agreed upon time and location between the school and the parents. However, 34 CFR § 300.322 (d) allows the school to proceed with the meeting without the parents if they are unable to convince the parents to attend. The can also proceed if the parents affirmatively refuse to attend the meeting according to 34 CFR § 300.322 (c). Finally, 34 CFR § 300.322 (d)(1)-(3) requires the school to document all correspondences that attempt to schedule the meeting. If the parents are unable to contact the parent but have documented their attempts, they may proceed without the parent.

The research described above demonstrates frustration of parents who do not understand special education, were being strong-armed into consenting to the school's recommendations, and believed contributions to the meetings were not being heard. In comparing that perception to the court decisions outlined where schools prevailed, the parents understood the special education process but there was consistency with the research in that they were alleging the schools were not agreeing with them on placement decisions. At the basis of this disagreement was a parent who believed the public school was unwilling to entertain their assertions that FAPE could not be provided in the public school setting. It is clear that the parents involved in these cases would not be strong-armed by the schools however, it is also apparent the schools would not be intimidated by the parents.

Comment [sb18]: Try to use active rather than passive voice, e.g., "Several of the appellate courts identified specific criteria that would permit a school to proceed with an IEP meeting despite parental absence when the following criteria are met. First, the school may proceed with the IEP meeting..."

Comment [sb19]: Consider another way to convey this inconsistency, "Although the research literature suggests that parents were frustrated with schools and felt like they were not being heard during IEP meetings, the court decisions discussed herein reveal that parents may also be expecting more from the schools than is legally required. In other words, parents are a participant in the IEP process and not the dominant voice. given the importance of relying on educational experts and unique needs of the school environment when determining how to achieve FAPE or making placement decisions."

One difference between the research and the cases is that the subjects in the research expressed ignorance of education law. Particularly in Fish (2006) the parents expressed a desire to understand special education law. Perhaps if the parents in the research were aware of their ability to file due process and pursue their cases in federal court, they could feel more empowered regarding the special education process for their students. Empowerment would allow them to feel they are contributing meaningfully to the IEP meeting and will not be bullied into consenting.

Comment [sb20]: I like where you are headed with this concluding remark and paragraph. I think this could be strengthened in the future revision.

References

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