

Key Strategies for Constant and Meaningful Parent Participation in the IEP/504 Process

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Speaker

Alefia Mithaiwala is a partner at Atkinson, Andelson, Loya, Ruud & Romo in Irvine, California. She represents school districts and educational agencies in all matters, including administrative trials, federal appeals, resolution meetings, expulsion hearings, mediations, and responses to OCR and state Department of Education compliance complaints. She practices preventative law by consulting and training school staff on various IDEA, discipline, ADA, and Section 504 matters.

She has over 15 years of diverse experience in the field of education and education law. She received her Masters of Education degree from Harvard University Graduate School of Education with an emphasis on special education policy. She also worked with the U.S. Department of Education, Office of Special Education and Rehabilitative Services, to draft regulations for the 2004 amendments to the IDEA.

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Discussion Outline

- A. IDEA's Parent Participation Framework
- B. Opportunities for Parent Participation
 - 1. Child Find
 - 2. Assessment Planning and Consent
 - 3. Evaluation
 - 4. IEP Meeting Notice
 - 5. IEP Meeting
 - 6. Post IEP Meeting
- C. Section 504's Parent Participation Framework

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IDEA's Parent Participation Framework

Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 103 LRP 31848, 458 U.S. 176 (1982)

— “[A] court's inquiry in [IDEA litigation] is twofold. First, has the [district] **complied with the procedures** set forth in the Act? And second, is the **individualized educational program** developed through the Act's procedures **reasonably calculated to enable the child to receive educational benefits?**”

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IDEA's Parent Participation Framework

Two Components to FAPE

Procedural Component

Substantive Component



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IDEA's Parent Participation Framework

Endrew F. v. Douglas County Sch. Dist. RE1, 69 IDELR 174, 137 S.Ct. 988 (2017)

- “To meet its substantive obligation under the IDEA, a school must offer an IEP **reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.**”
- A reviewing court must not “substitute their own notions of sound educational policy for those of school authorities which they review,” but “may fairly expect those authorities to be able to offer a **cogent and responsive explanation for their decisions** that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”

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Why Is Parent Participation So Important?

1. Because our obligation, at each step in the IEP process, is to offer Parents a **cogent** and **responsive** explanation.
2. Because procedural violations rise to the level of a substantive denial of FAPE when:
 - They impede a child's right to FAPE;
 - They significantly **impede the parent's opportunity to participate** in the decision making process; or
 - They cause a deprivation of educational benefit.

34 CFR 300.513(a)(2)

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Opportunity # 1: Child Find

- The IDEA is quite clear that the child find obligation rests with school districts, and we cannot rely on parents to make a referral, when there is a reason to suspect a disability. 34 CFR 300.111(a)(1)(i).
- That said, parents are certainly at the front lines in identifying student need, so **parental participation, even in the child find process is integral.**
- How do we include parents in the *child find* process?

Inclusive “General Ed” Systems:

SST, MTSS, parent/teacher conferences,
parent newsletters, parent workshops, etc.

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Opportunity #2: Assessment Plan Notice and Consent

34 CFR 300.300(a): Parental consent for initial evaluation

(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with disability...must, after providing notice..., obtain **informed consent**...from the parent of the child before conducting the evaluation.

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Opportunity #2: Assessment Plan Notice and Consent

34 CFR 300.9: Consent means that:

- (a) The parent has been **fully informed of all information relevant** to the activity for which consent is sought, in his or her native language, or through another mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent **describes that activity** and lists the records (if any) that will be released and to whom...

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Opportunity #2: Assessment Plan Notice and Consent

- **Letter to Johnson, 56 IDELR 51 (OSEP 2010):** The parent does not need to have an in-depth understanding of the activity, but rather, for consent to be informed, the parent just needs to have a *general understanding of the activity for which consent is needed*.

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Opportunity #2: Assessment Plan Notice and Consent

**Is this
informed
consent?**

| Evaluation Area | Examiner Title |
|--|---------------------|
| <input type="checkbox"/> Academic Achievement - These assessments measure reading, arithmetic, oral and written language skills, and/or general knowledge. | |
| <input type="checkbox"/> Health - Health information and testing is gathered to determine how your child's health affects school performance. | |
| <input type="checkbox"/> Intellectual Development - These assessments measure how well your child thinks, remembers, and solves problems. | |
| <input type="checkbox"/> Language/Speech Communication Development - These assessments measure your child's ability to understand and use language and speak clearly and appropriately. | |
| <input type="checkbox"/> Motor Development - These assessments measure how well your child coordinates body movements in small and large muscle activities. Perceptual motor skills may also be measured. | |
| <input type="checkbox"/> Social Emotional/Behavior - These assessments will indicate how your child feels about him/herself, gets along with others, takes care of personal needs at home, school and in the community. | |
| <input type="checkbox"/> Adaptive Behavior - These assessments indicate how your child takes care of personal needs at home, school and in the community. | |
| <input type="checkbox"/> Post-Secondary Transition - These assessments related to training, education, employment and where appropriate independent living skills. | |
| <input checked="" type="checkbox"/> Other TSNA assessment. | School Psychologist |
| <input type="checkbox"/> Alternative Means of Assessment - (Describe alternative methods of assessing the child, if applicable) | |

Parents / Guardians have protections under state and federal procedural safeguard provisions. Please refer to the enclosed NOTICE OF PROCEDURAL SAFEGUARDS for an explanation of these rights. If you would like further information about your rights or the proposed action and / or referral please contact:

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Opportunity # 2: Assessment Plan Notice and Consent

Jefferson County Sch. Dist., 119 LRP 5663 (SEA CO 12/18/18):

Parent filed a state level complaint, alleging, in part, that the district evaluated without parental consent.

Relevant Facts:

- Parent told district staff that student was being privately evaluated for Autism.
- Parent signed a “Prior Notice and Consent for Reevaluation.” On this form, the areas to be evaluated were listed as “**communicative status, academic performance, social and emotional status, health, and motor abilities.**”
- Parent was provided with the CARS rating scale as part of the evaluation, which she did not return. She did return other rating scales and forms.
- Parent then alleged that the district evaluated for Autism, without her consent.

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Opportunity #2: Assessment Plan Notice and Consent

Jefferson County Sch. Dist., 119 LRP 5663 (SEA CO 12/18/18):

Parent filed a state level complaint, alleging, in part, that the district evaluated without parental consent.

SEA Findings:

“Parent was **not sufficiently advised that the consent she signed would allow staff to conduct autism evaluations** on Student, and that she did not give informed consent, **resulting in a procedural violation** of the IDEA. **However, the [SEA] does not find that this error resulted in a substantive violation** of the IDEA. The autism testing did not change Student's placement in any way, did not affect Student's provision of FAPE, and did not impede Parent's participation in the decision making process. Rather, when Parent raised her concerns and presented the private autism evaluation during the May 2018 IEP meeting, the team agreed that Student was not autistic. ”

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Opportunity #2: Assessment Plan Notice and Consent

In Summary: Ask—and document in writing, before providing the assessment plan:

- What are your concerns about your student?
- What questions do you have about how your student learns or about his or her education?
- Does your child have any outside providers? May we obtain release of information to gather input?
- And, last but not least: here are the district's concerns, and potential services and eligibility categories we are thinking about evaluating for, to obtain a deeper understanding.

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Opportunity #2: Assessment Plan Notice and Consent

Then, in the Prior Written Notice/Assessment Plan:

- **Detail the testing plan: who, what, how, when and where**
 - This will build trust and open communication.
 - Need not list every assessment tool. If parents ask for specific measures, *go ahead and provide those you anticipate using*, but be sure to note that the assessment process is fluid and may change depending on how student performs.

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Opportunity #3: Evaluation

34 CFR 300.304(b): In conducting the evaluation, the public agency must —

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, **including information provided by the parent**, that may assist in determining —
 - (i) whether the child is a child with disability....; and
 - (ii) the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum...

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Opportunity #3: Evaluation

Information Provided Directly by the Parent

- Related service assessors should not rely on school psychologist to gather parent input for all assessors.
- Parent input is rating scales, interviews, health/development questionnaires.
 - Follow up!
- If parent is not responding, document it in the report.

Chaffey Joint Union High Sch. Dist. 120 LRP 19658 (SEA CA 06/18/20), *aff'd*, 81 IDELR 277 (C.D. Cal. 2022): ALJ determined the speech report was defensible without parent input due to multiple documented attempts via phone and email to obtain information from the parent.

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Opportunity #3: Evaluation

The following procedures were components of the evaluation:

- Review of School Records
- Interview(s): student, teachers, parent (attempted)
- Observation(s)
- Testing and Formal Assessments:
 - Health Assessment and Review (Nurse)
 - Kauffman Test of Educational Achievement, 3rd Edition (KTEA-3) [
 - Woodcock-Johnson Test of Cognitive Abilities, Fourth Edition (WJ-IV-COG)
 - Test of Auditory Processing Skills, Fourth Edition (TAPS-IV)
 - Test of Visual Perceptual Skills, Second Edition (TVPS-II)]
 - Beery Developmental Test of Visual-Motor Integration, Sixth Edition (VMI-VI)
 - Behavior Assessment System for Children, Third Edition (BASC-III) (Parent – attempted, Teacher)

Parent Input/Interview

Parent input forms were sent with the original assessment plan sent 12/06/2020. A follow up phone call was made on 02/20/2020 with no answer. A follow up email was sent on 04/30/2020 providing links to an online parent input survey and BASC-II Parent forms.

Parent was sent the BASC via email again on 5/15/2021; a phone message and email message were also left/sent. Parent returned the phone call and said he would complete the BASC questionnaire. A follow-up phone message and email was made on 05/21/2021; parent again returned the phone call on 5/23/2021 and said he would complete the BASC (he had been busy). During phone conversations, Parent expressed a preference to give his input via writing. BASC was still not completed at the time of writing this report nor was the parent input survey or any additional parent input.

BACKGROUND INFORMATION, EDUCATIONAL HISTORY & CURRENT ACADEMIC PROGRESS

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Opportunity #3: Evaluation

And Also: Gathering Information Provided by Private/Outside Providers Is Another Way of Gathering Parent Input.

- “Don’t ask, don’t tell” is not defensible.
 - “Dad did not mention...”
 - Always ask about outside services and providers and provide a blank release of information (“ROI”) if you are unsure.
- If parents won’t agree to an ROI, put that in your report.
- Document contact attempts and/or attempts to obtain ROIs.
- List the specific private/outside reports reviewed and brief summary or bullet points of what you found significant and relevant.

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Opportunity #4: IEP Meeting Notice

34 CFR 300.322(a): Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including—

- (1) **Notifying parents of the meeting early enough** to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a **mutually agreed on time and place.**

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Opportunity #4: IEP Meeting Notice

What if they just won't agree to a date?

Doug C. v. State of Hawaii Dep't of Educ., 61 IDELR 91 (9th Cir. 2013)

- Generally, an IEP meeting may not proceed in the parent's absence unless the parent affirmatively refuses to attend the IEP meeting.
- "[A]fter-the-fact parental involvement" is insufficient to cure a FAPE denial caused by excluding a parent from an IEP meeting because "the IDEA contemplates parental involvement in the creation process."

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Opportunity #4: IEP Meeting Notice

What If They Just Won't Agree to a Date?

- Because a school district is ultimately responsible for the student's educational program, a school district may conduct an IEP meeting without a parent when it is "unable to convince" the parents that they should attend.
34 CFR 300.322(d)
- "Where, as here, a conflict arises prior to the meeting, it is timely communicated to the other side, and an offer is made to reschedule, the previously scheduled meeting is no longer in conformity with the regulation because it is no longer "at a mutually agreed on time and place." (emphasis added) *B.D. v. District of Columbia, 80 IDELR 38 (D. D.C 2021)*

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Opportunity #4: IEP Meeting Notice

Your "What If They Don't Even Respond!?" Checklist:

- ✓ Did I provide timely notice?
- ✓ Did I follow up?
- ✓ Did I follow up again?
- ✓ Did I ask them to provide dates?
- ✓ Did I provide notice of a rescheduled date when they failed to show/respond?
- ✓ Did I provide notice of a reschedule again when they failed to show/respond again?
- ✓ Did I reschedule one last time when they didn't show up or respond?
- ✓ Did I document all of my attempts, above, in a prior written notice, proposing to convene on X date, due to parents' nonresponse?

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Side Note

Pre-Meeting or Predetermination?

- You do not deny parent participation in the IEP process by preparing for an IEP meeting!
- “A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. **A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal** that will be discussed at a later meeting.”
34 CFR 300.501(b)(3)

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Opportunity #5: During the IEP Meeting

34 CFR 300.322(a): Each public agency must take steps to ensure that **one or both of the parents** of a child with a disability are present at each IEP team meeting or are **afforded the opportunity to participate...**

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Opportunity #5: During the IEP Meeting

One or both of the parents?

What if they are divorced?

As soon as you hear the words:

- Divorce
- Guardianship
- Foster Parent
- Surrogate Parent
- Court Appointed

Ask for the **court order**. Check the date of the order – If it's old, ask if there is an updated order/agreement and be sure you have all the pages!

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Opportunity #5: During the IEP Meeting

One or both of the parents?

- If parents are involved in their students' lives, whether they have legal custody or not, they should also be invited to participate in educational meetings, and be provided with educational records. This is different from *educational decision making* though, which only a parent with legal custody can exercise.
- Where there is joint legal custody, but an inability to have a productive meeting due to ongoing disagreement, try to make accommodations for separate meetings, even if the second meeting is a "we will fill you in" or "we will pre-meet with you" meeting.
- These practices go a long way to guard against denial of parent participation claims.

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Opportunity #5: During the IEP Meeting

Afforded the opportunity to participate?

- *R.L. and S.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182(11th Cir. 2014): Parental participation in the IEP process means more than having an opportunity to speak. The court explained that a district must show that it comes to the meeting with an **open mind and is "receptive and responsive" to the parents' position at all stages**, rather than cutting the conversation short when parents express their concerns.
- *Colonial Sch. Dist. v. G.K.*, 119 LRP 4405 (3rd Cir. 2019, *unpublished*): The IDEA does **not require districts to ensure that parents perfectly comprehend** every aspect of their child's IEP, **however** districts must share evaluative data, **include parents in all IEP discussions, address their concerns, and keep them apprised of the student's progress.**

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Opportunity #5: During the IEP Meeting

Meaningful Parental Participation Checklist

- ✓ Did I listen to the parent's input?
- ✓ Am I going into the meeting with an open mind?
- ✓ Does the parent need a translator?
- ✓ Does the parent need a note-taker or an advocate for their needs?
- ✓ Does the parent need to tape record the IEP meeting due to limitations that require further review by her later?
- ✓ Does the parent need a transcript of the meeting?
- ✓ Am I remaining receptive and responsive to the parent?
- ✓ Did I **document** the team's attempts to obtain parent input?

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Opportunity #5: During the IEP Meeting

Example blurb from actual IEP notes:

- Procedural Safeguards and an opportunity for explanation were offered to the parent prior to the meeting via email. No questions at this time.
- The purpose of the meeting was to address parent concerns as raised in due process complaint.
- PS asked about parent concerns in regards to placement at [District] high school. PS asked what specifically [private school] offers that is needed for [Student] to make progress on proposed goals. FC shared that concerns with placement were laid out in the complaint and referred the team to the complaint.
- PS shared that the complaint states that the district did not assess in all areas of need. PS asked what additional areas the parents would like the student assessed in.

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Opportunity #5: During the IEP Meeting

Chaffey Joint Union High Sch. Dist. 120 LRP 19658 (SEA CA 06/18/20), aff'd, 81 IDELR 277 (C.D. Cal. 2022), on appeal...

- Parents and their private evaluators elected to join the meeting telephonically through the parent's advocate's telephone line.
- During the IEP team meeting, the advocate "became upset, hostile, and hung up when asked to hold questions until the end of the assessment findings presentation."
- IEP team members attempted unsuccessfully to call back and left voice messages. They also "checked with front office and determined that the phone system had been functioning properly."
- They also "waited a reasonable time"...for them to rejoin the meeting. When they did not call back, the IEP team members "reasonably concluded parents chose not to participate and proceeded with the IEP team meeting."

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Opportunity #6: After the IEP Meeting

M.C. v. Antelope Valley Union High Sch. Dist., 69 IDELR 203 (9th Cir. 2017), *cert. denied*, 117 LRP 50165, 138 S.Ct. 556 (2017)

- “Under the IDEA, **parental participation doesn't end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services** that their child is to receive. When a parent is unaware of the services offered to the student -- and, therefore, can't monitor how these services are provided -- a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP.”

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Opportunity #6: After the IEP Meeting

- Use the prior written notice and/or IEP amendment process to clarify any ambiguities or address any lingering concerns.
- Provide service logs and progress reports to parents to keep them apprised of delivery of FAPE.
- Train staff that they don't have to wait/shouldn't wait for the annual IEP due date to address hiccups along the way!
- Communication logs may be necessary.
- *Communication plans* may sometimes also be necessary (and are permissible!)

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Opportunity #6: After the IEP Meeting

Flagstaff (AZ) Junior Acad., 117 LRP 3118 (OCR 2016): Mother of an eighth-grader with ADHD sent emails to a teacher up to four times per day and expected prompt responses. District was permitted to restrict communication to school's director and OCR found this was not retaliation for advocacy, given mother's "frequency" and "tone" of communication.

North Hills Sch. Dist., 118 LRP 12493 (SEA PA 2018): Because the parents were "fully able to continue to communicate and to engage in the educational programming for their children," the district's policy limiting the parents' communication to a single point of contact did not constitute retaliation under Section 504.

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An Additional Word About Section 504

34 CFR 104.33(b)(2): Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the [Section 504] standard(s)...

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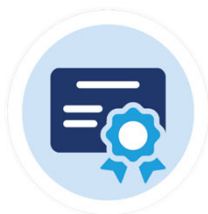
Questions?



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then click “Submit”.**



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