

Seven Suggestions to Help Districts Avoid Special Education Hearings: A Short-Term Win May Be a Long-Term Loss

Dr. Howie Knoff: The **Building Strong Schools to Strengthen Student Outcomes** Series

This past summer, I served as an Expert Witness for a High School student trying to get more extensive special education services for a serious and rare medical condition. While we made the best case possible in court, the student lost.

While I legally understood the Administrative Law Judge's ruling, school districts, historically, have won the vast majority of special education lawsuits in this country—at the Due Process and State or Federal Court levels. And yet, having testified in cases across the country, I know that some Districts focus more on short-term legal "Win" in Court, not understanding that they may incur long-term parent "Losses."

In the coming years, special education litigation is expected to skyrocket especially due to the increased number of Students with Disabilities (SWDs) nationally, and the direct and/or related services not provided to SWDs during the pandemic. The U.S. Office of Special Education Programs (OSEP) telegraphed this coming "storm cloud" when they published a mid-pandemic Guidance Letter (August 24, 2021) emphasizing that "Regardless of the COVID-19 pandemic or the mode of instruction, children with disabilities are entitled to receive a free, appropriate, public education."

Critically, the pandemic has no "statute of limitations." Thus, for example, it is possible that the parents of a kindergarten student with disabilities—who was not appropriately educated during the pandemic—could file a lawsuit ten years later when the now-adolescent is failing his/her sophomore year in high school.

The primary claim? That the pandemic-year loss of services in 2021 created a multi-year "educational cascade of student failure and frustration" in 2031.

Critically, I am not saying that these parents will "win" the case. What I am saying—for any educator who has had to prepare for and participate in a Due Process or Federal special education court case—is that the case still

needs to be tried. And this will involve countless hours of staff documentation, preparation, and participation. . . not to mention the emotional toll during the entire process.

Given this, I would like to share Seven Suggestions as to what district and school staff should do and not do when parents of SWDs express serious, ongoing concerns about their child's special education services. . . and litigation appears to be on the horizon. The suggestions focus on understanding where parents are coming from, and how to approach them with empathy and sensitivity—even when things get tense or confrontative.

The Suggestions are:

- Suggestion #1. Admit Mistakes/Don't Focus on Being Right
- Suggestion #2. Remember that Younger SWD (and their Parents) May Be in Your District for Another 10 Years
- Suggestion #3. Make Sure that All Communications and Discussions are Clear
- Suggestion #4. Know that Parents Know What They Know, Not What You Know
- Suggestion #5. Parents often go through the "Stages of Grief"—They are Afraid, Anxious, Angry, or in Denial
- Suggestion #6. Keep it Professional, Not Personal
- Suggestion #7. Don't Mediate if You Don't Intend to Moderate

The "full text" explaining these suggestions is available [at the following Link](#).

The Suggestions above will help staff either prevent many conflicts in the first place, or resolve them before the lawyers get involved. Significantly, once the lawyers are involved, the case becomes more about "the law" and less about education, and more about "who is right" than who gets hurt.

And given the historical track record noted above, once in court, many districts will be awarded a short-term win, but the long-term loss will solidify the already-damaged home-school-student relationships. District and school staff need to remember that—while a SWD's administrators and teachers change over time—these students' parents typically do not change, and they

often have long memories. An emotional, relationship-breaking special education court loss early in a SWD's school career may negatively impact the parents' and students' attitudes, beliefs, and interactions at every annual IEP review meeting and three-year re-evaluation for many years to come.

To close, I am not suggesting that we placate unhappy parents regarding the services for their SWDs. I am saying that the Seven Suggestions above will help maintain the positive relationships, productive communication, and collaborative problem-solving with them over time. Read the Suggestions in the full version of this article. See what you think!

Reference

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Author Background

Howie Knoff, PhD, NCSP, is an international consultant, speaker, and author specializing in school improvement, strategic planning, social-emotional learning, social skills training, multi-tiered systems of support, and interventions with behaviorally challenging students. He has been a university professor (22 years) and State Department of Education federal grant director (13 years), and is currently the National Expert on three U.S. Department of Education School Climate Transformation Grants. The author of 24 books and 100+ articles/book chapters, he was the 21st President of the National Association of School Psychologists. Learn more at www.projectachieve.info.

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