

**HAVING AN OPEN
MIND, NOT A BLANK
MIND
AVOIDING PREDETERMINATION
CLAIMS**

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WHAT IS PREDETERMINATION?

Predetermination occurs when an Individualized Education Plan (IEP) is decided upon before an IEP meeting.

- “Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.” (*H.B. v. Las Virgenes USD*, 239 Fed. Appx. 342 (9th Cir. 2007)).

PREDETERMINATION AND PARENTAL RIGHTS

Predetermination is a procedural violation of the Individuals with Disabilities Act (IDEA) that deprives parents of the opportunity to meaningfully participate in their child's IEP. (20 U.S.C. §1415(F)(3)(E)(ii)).

- Predetermination can deny the child a free appropriate public education (FAPE). (*Deal v. Hamilton County Bd. of Edu.*, 392 F.3d 840 (6th Cir. 2004)).

WHAT DOES PREDETERMINATION LOOK LIKE?

Predetermination can take a number of forms including when:

- School staff complete a finalized IEP before meeting with the parents;
- School staff indicate that the IEP has already been decided before meeting with the parents;
- Members of the staff or school policy indicate that there are only certain courses of action available for the child's IEP.

WHAT DOES PREDETERMINATION LOOK LIKE?

- Unofficial school policy prohibits certain services or placements.
- The school unreasonably refuses to schedule the IEP meeting to accommodate the parents.

EVIDENCE OF PREDETERMINATION

Courts have found evidence of predetermination when:

- A school has an unofficial policy of refusing to provide certain programs or services.
 - *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004);
- School staff decide a child's placement before an IEP meeting and without parental input.
 - *Spielberg v. Henrico County*, 853 F. 2d 256 (4th Cir. 1988);

EVIDENCE OF PREDETERMINATION (CONT.)

School administration makes its determination prior to an IEP meeting and refuses to consider alternatives.

- *H.B. v. Las Virgenes USD*, 239 Fed. Appx. 342 (9th Cir. 2007);

School staff fail to incorporate the suggestions of the parents or listen to the parents' concerns.

- *L.B. v. Gloucester Twp Sch. Dist.*, 489 Fed. Appx. 564, (3d Cir. 2012);

EVIDENCE OF PREDETERMINATION (CONT.)

The school schedules the IEP meeting without inquiring into the parents' availability and unreasonably refuses to reschedule the meeting.

- *J.N. v. Dist. of Columbia*, 677 F. Supp. 2d 314 (D.D.C. 2010)

RECENT PREDETERMINATION CASES

A School District's expression that it wished to bring a child back to public school from a private school because it believed that was the most appropriate setting was not predetermination.

- (A.B. v. Franklin Twp. Cmty. Sch. Corp., 898 F. Supp. 2d 1067 (S.D. Ind. 2012))

RECENT PREDETERMINATION CASES (CONT.)

Where a statewide policy prohibits the use of a teaching method like aversive intervention, failure to consider that method is not predetermination.

- (*Bryant v. New York State Educ. Dep't*, 692 F.3d 202, (2d Cir. 2012))

RECENT PREDETERMINATION CASES (CONT.)

Although the term “decision” was never used in emails and pre-planning memos, the court held that school staff were not open minded and predetermined a child’s 7th grade reading placement before the IEP meeting because they were committed to removing the student from his current placement.

- P.C. v. Milford Exempted Vill. Sch., 2013 U.S. Dist. LEXIS 7477 (S.D. Ohio 2013)

RECENT PREDETERMINATION CASES (CONT.)

There was no predetermination where school staff met and drafted an IEP and presented it to the parents because the parents had an opportunity to participate in creating the final IEP.

- *L.G. v. Fair Lawn Bd. of Educ.*, 486 Fed. Appx. 967 (3d Cir.. 2012)

Where a school district is willing to make adjustments based on a parent's input, predetermination does not exist.

- *Burns v. Hamilton Southeastern Schools*, 668 F.3d 851 (7th Cir. 2011).

RECENT PREDETERMINATION CASES (CONT.)

A parent's claim of predetermination fails when she ended the IEP discussion even though the IEP team was willing to continue a meaningful conversation.

- *Bell v. Franklin Twnshp. Ctr. Sch. Corp.*, __ F. Supp. _____, 2012 WL 4481308 (S.D. Ind. 2012)

PREDETERMINATION VS. PREPARATION

It is acceptable to prepare for an IEP meeting by discussing the child or the IEP before the meeting so long as no final determinations are made.

- *N.L. v. Knox County Sch.*, 315 F.3d 688 (6th Cir. 2003).

APPROPRIATE IEP PREPARATION

Staff must come to the IEP table with an open mind, but this does not mean they should come to the table with a blank mind.

“While a school system must not finalize its placement decision before an IEP meeting, it can, and should, have given some thought to that placement.”

- *Doyle v. Arlington County Sch. Bd.*, 208 F.3d 560 (6th Cir.).

APPROPRIATE IEP PREPARATION (CONT.)

Research by school staff on placement options can be preparation, not predetermination.

- *Schoenbach v. Dist. of Columbia*, 2006 U.S. Dist LEXIS 38667 (D.D.C. 2006).

Staff notes, memos, emails and discussions regarding a student's IEP that make no final judgments can be evidence of thoughtful preparation, not predetermination.

- *Brown v. Bartholomew Consol. Sch. Corp.*, 442 F.3d 588 (7th Cir. 2006).

PRACTICAL PREPARATION STRATEGIES:

Be careful when writing internal memos and emails.

Faculty and staff must avoid making decisions before an IEP meeting.

Internal communications should reflect that no services or placement options have been selected or ruled out.

PRACTICAL PREPARATION STRATEGIES (CONT.)

Written school policy should indicate that faculty and staff make IEP decisions based on assessment data, individual student need, parental input, and staff input.

Train faculty and staff on how to handle parental requests for placement or services.

- Language like “The district will not pay for X” or “The school will only allow Y” can be evidence of predetermination.

PRACTICAL PREPARATION STRATEGIES (CONT.)

Have an open mind when developing an IEP.

Parental input should be incorporated into the IEP when reasonable, and new strategies or ideas can be a valuable part of the IEP process.

Research any unfamiliar methods or programs in order to make a fully informed decision about student needs.

PRACTICAL PREPARATION STRATEGIES (CONT.)

Draft IEP's

- Any draft IEP created before the meeting with parents should be clearly labeled as “DRAFT”
- Provide this draft to the parents before the meeting, and inform the parents of the school's preparation efforts.
- Remember to indicate that these preparation efforts are made to facilitate a better meeting, and that **no final decisions have been made.**

FACILITATING IEP TEAM MEETINGS:

The IEP Team Meeting should focus on the process of developing an IEP, not the results.

The school district must keep an open mind, and the records and language used at the IEP meeting should reflect that.

FACILITATING IEP TEAM MEETINGS (CONT.)

Use neutral language like:

- “The IEP team discussed 5 possible placements and the pros and cons of each.”
- “The parents were asked if they would like to suggest any alternatives for the IEP Team to consider.”
- “The team agreed to _____ in light of parental input.”

FACILITATING IEP TEAM MEETINGS (CONT.)

Avoid using language that makes the IEP decisions appear unilateral like:

- “The school decided ____.”
- “No matter what, the school elects to ____.”
- “The team developed the IEP and presented it to the parents today.”
- “We’re here to talk about the *results* of the IEP.”

FACILITATING IEP TEAM MEETINGS (CONT.)

- “This meeting is to change the student’s placement to ____.”
 - Remember to keep the focus on the mutual process of developing an IEP.

FACILITATING IEP TEAM MEETINGS (CONT.)

If the parents present any additional information including external evaluations or assessments:

- Take time to fully consider these sources.
- Include these external sources in the record.
- Do not automatically disregard the recommendations made by the parents or outside professionals.

DEVELOPING THE IEP:

Be sure to track any changes to the draft IEP that were made as a result of parental input or external information.

- Incorporate reasonable parental input into the IEP.
 - This can show a willingness to listen to the parents and defeat a predetermination claim.
- Document any parental input or additional information for the record.

MEANINGFUL PARENTAL PARTICIPATION

It is important that parents have an active role in developing an IEP for the child, but this does not mean that the school district must grant the parents anything they request.

In *Blackmon v. Springfield R-XII School District*, the Court stated:

MEANINGFUL PARENTAL PARTICIPATION (CONT)

“[T]he IDEA does not require school districts simply to accede to parents' demands without considering any suitable alternatives. . . . The School District's adherence to this decision does not constitute a procedural violation of the IDEA simply because it did not grant Grace's parents' request.” (198 F.3d 648, (8th Cir. 1999))

CONCLUSION

Thorough preparation will not be considered predetermination if faculty and staff are open minded about parental input.

Remember to keep the focus of an IEP meeting on the process, not the results.

Keep service and placement options open during preparations and discuss each option with the parents to facilitate their meaningful participation.