

# **Ethical Boundaries in Special Education Advocacy & Effective Communication Within the IEP Team**

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GAY JONES & KUHN PLLC

# Our Team





*“Children are NOT a  
distraction from  
more important  
work.  
They are THE MOST  
important work.”*

*- C.S. Lewis*

The word "ETHICS" is spelled out in a row of six wooden blocks. Each block is a different color and has a large, bold, blue capital letter on it. The colors from left to right are teal, yellow, red, magenta, blue, and lime green. The blocks are arranged horizontally and are set against a solid light blue background.

**eth·ics**

*/'eTHiks/*

*noun*

**1. moral principles that govern a person's behavior or the conducting of an activity**

**2. the branch of knowledge that deals with moral principles**

# **A D V O C A T E**

**ad·vo·cate**

**/ ad-və-kət /**

***noun***

- 1. one who pleads the cause of another**
- 2. one who defends or maintains a cause or proposal**
- 3. one who supports or promotes the interests of a cause or group**

## ATTORNEYS

- Governed by ethical codes in each state
- May not practice law in violation of the legal profession or assist another in doing so
- Required to follow confidentiality requirements and bound by attorney client privilege
- Required to disclose conflicts of interest
- Required to advise a client but also to respect the client's decision
- Covered by malpractice insurance
- Shall provide competent assistance and treat all parties with candor, fairness, and civility

# **ATTORNEYS**

- Licensed legal professionals who can give legal advice about the rights of your child and how to enforce those rights
- Can provide representation in a court of law
- Can file documents on your behalf
- Can be empowered to speak on your behalf
- Can advise on the legal ramifications of executing documents on a child's behalf

## SPECIAL EDUCATION NON-ATTORNEY ADVOCATES

- Ethical standards not set by a governing body
- Should make a full disclosure to every individual involved with a matter that they are not licensed to practice law and cannot give legal advice
- Should provide competent assistance
- Should treat all parties subject to a dispute with candor, fairness, and civility

# **SPECIAL EDUCATION NON-ATTORNEY ADVOCATES**

- ✓ Can assist in navigating the special education process
- ✓ Can provide resources about a child's rights
- ✓ Can offer guidance from experience in dealing with school districts
- ✓ Can offer suggestions on teaching methods, assistive technology, and other available resources



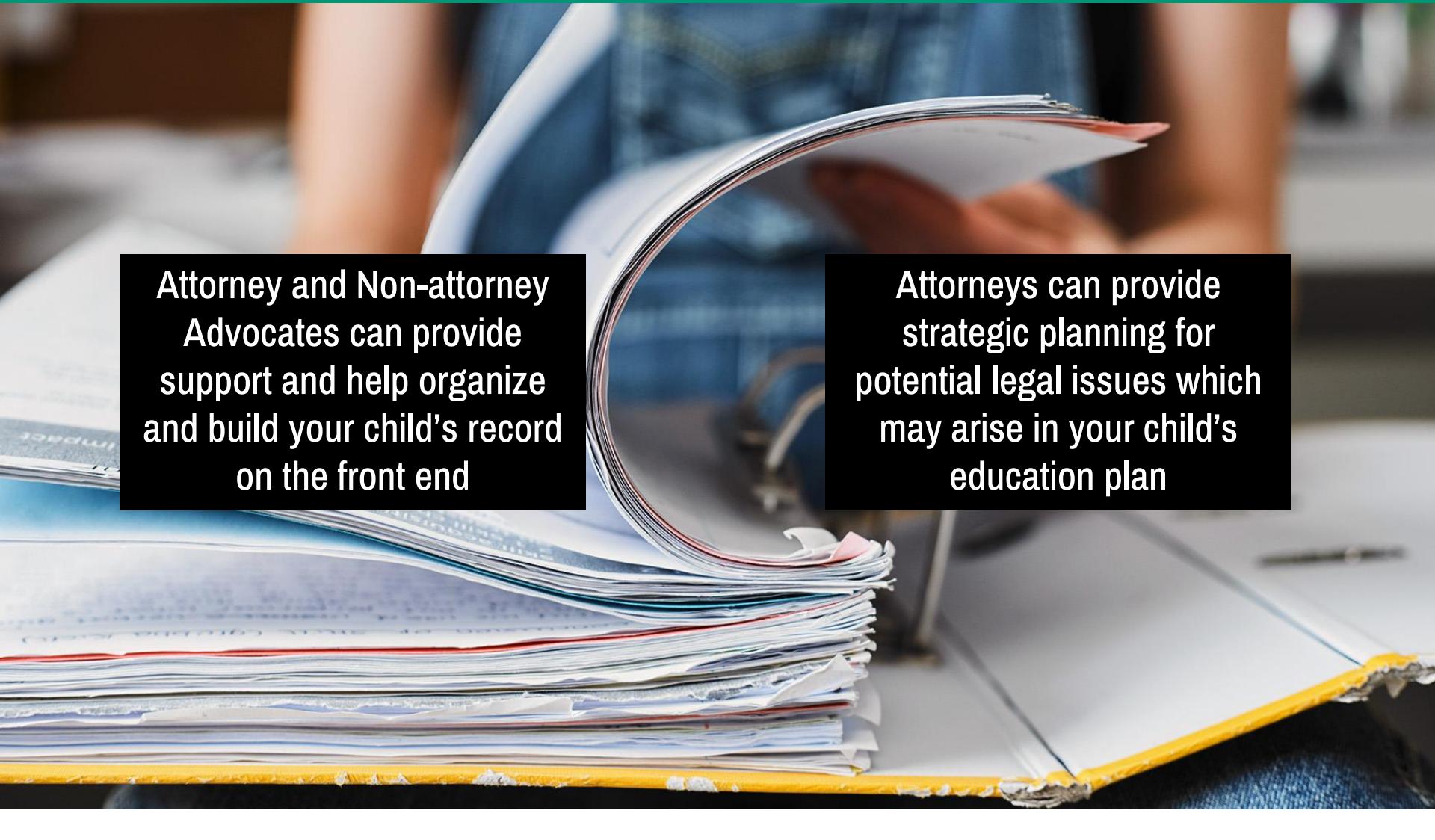
## ATTORNEY & NON-ATTORNEY ADVOCATES

- ✓ Attend IEP meeting
- ✓ Review a child's IEP or 504 plan
- ✓ Help create a plan to build and maintain a child's record
- ✓ Offer guidance from experience in dealing with schools and school districts

## ATTORNEY & NON-ATTORNEY ADVOCATES

- ✓ **Collaboration from the start** – both attorney and non-attorney advocates should assist parents in strategic planning for their child's education needs, including explaining their own role and limits in the process
- ✓ **Assessment of the specific needs of the child/issue**
  - Has the current issue reached a point that legal action may be necessary?
  - Could correspondence from an attorney help resolve a situation?
  - Has the school engaged legal counsel or taken legal action?
  - Are issues related to bullying and discipline affecting the child's educational rights?
  - Is this issue something that may escalate into a legal matter?
- ✓ **Development of a long-term strategy which protects educational rights** – what you do now may affect whether you have power to enforce in the future
- ✓ **Document!** Advocates should help parents maintain documentation throughout the child's education in case a dispute escalates to require legal action

# Attorney & Non-Attorney Advocates: Preserving Your Child's Record



Attorney and Non-attorney  
Advocates can provide  
support and help organize  
and build your child's record  
on the front end

Attorneys can provide  
strategic planning for  
potential legal issues which  
may arise in your child's  
education plan

# UNAUTHORIZED PRACTICE OF LAW

*Black's Law Dictionary* defines unauthorized practice of law as, "The practice of law by a person, typically a nonlawyer, who has not been licensed or admitted to practice law in a given jurisdiction."

*But why is it a problem?*

- ◆ Provides the individual no protection
- ◆ Puts clients at risk of waiving away their rights

## *E.R. v. Vineland Bd. of Educ. (New Jersey)*

Illustrates distinction that must be drawn between attorneys and non-attorney advocates.

- ✓ Non-attorney advocates may participate in a due process hearings
- ✗ Non-attorney advocates cannot charge for representing parents and children at a due process hearing
- ✗ Non-attorney advocates may not file motions on behalf of the parties in the case
- ✓ Only attorneys, or the parties to a case themselves, may file motions in a case

## *In Re Arons, 756 A.2d 864 (Delaware)*

In this case, a non-attorney advocate represented parents at a due process hearing.

- ✗ Non-attorneys may not practice law in due process hearings
- ✓ They may offer advice based on their special knowledge or training with respect to the problems of children with disabilities

# UNAUTHORIZED PRACTICE OF LAW

- May provide support during the IEP process ✓ OK
- May offer advice as to whether an IEP is actionable
- May advocate for, but *not* represent, a client at an administrative hearing

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- May *not* advise a parent on whether to sign or not sign an IEP NO!
- May *not* charge for services rendered at an administrative hearing
- May *not* offer advice on how to proceed with a case brought against a school district
- May *not* sign or file documents on behalf of a parent or child

## Family Educational Rights and Privacy Act (FERPA)

- Student educational records are official and confidential documents protected by one of the nation's strongest privacy protection laws.
- FERPA gives parents (as well as students in postsecondary schools) the right to review and confirm the accuracy of education records.

### “Education Records”

*Records directly related to a student maintained by an educational agency or institution, or by a party acting for the agency or institution*

- Parents have the right to review records, but schools are not required by law to provide free copies of information

Schools may charge a reasonable fee for obtaining records.

# RECORD IEP MEETING?

YES!

- There is no federal law prohibiting a parent or school official from recording IEP meetings.
- Audio recording of an IEP Meeting, when the IEP Team is aware of it, is not a violation of federal privacy law.
- You are required in most school districts to give advance notice of your intention to record the meeting. This requirement is usually 24 hours, but protocols and procedures of each district should be adhered to on the matter.

Dear [Meeting Coordinator],

Please let this email confirm that I plan to record the IEP meeting that is set for this week. As you are aware, recording IEP meetings is permitted by law and should not affect the date and time of the meeting which is set to take place. I have found recording these meetings assists me as I make decisions for my child. As the meeting coordinator, please ensure that all participants receive prior notice of this intent to record. Failure on your part to notify participants of the recording shall not result in a delay of this meeting.

Thanks,  
[Name]

- Any recording of an IEP meeting maintained by the school district becomes a part of the student's education record and is available to the parents through a written request.

**Just out of IEP  
meeting**



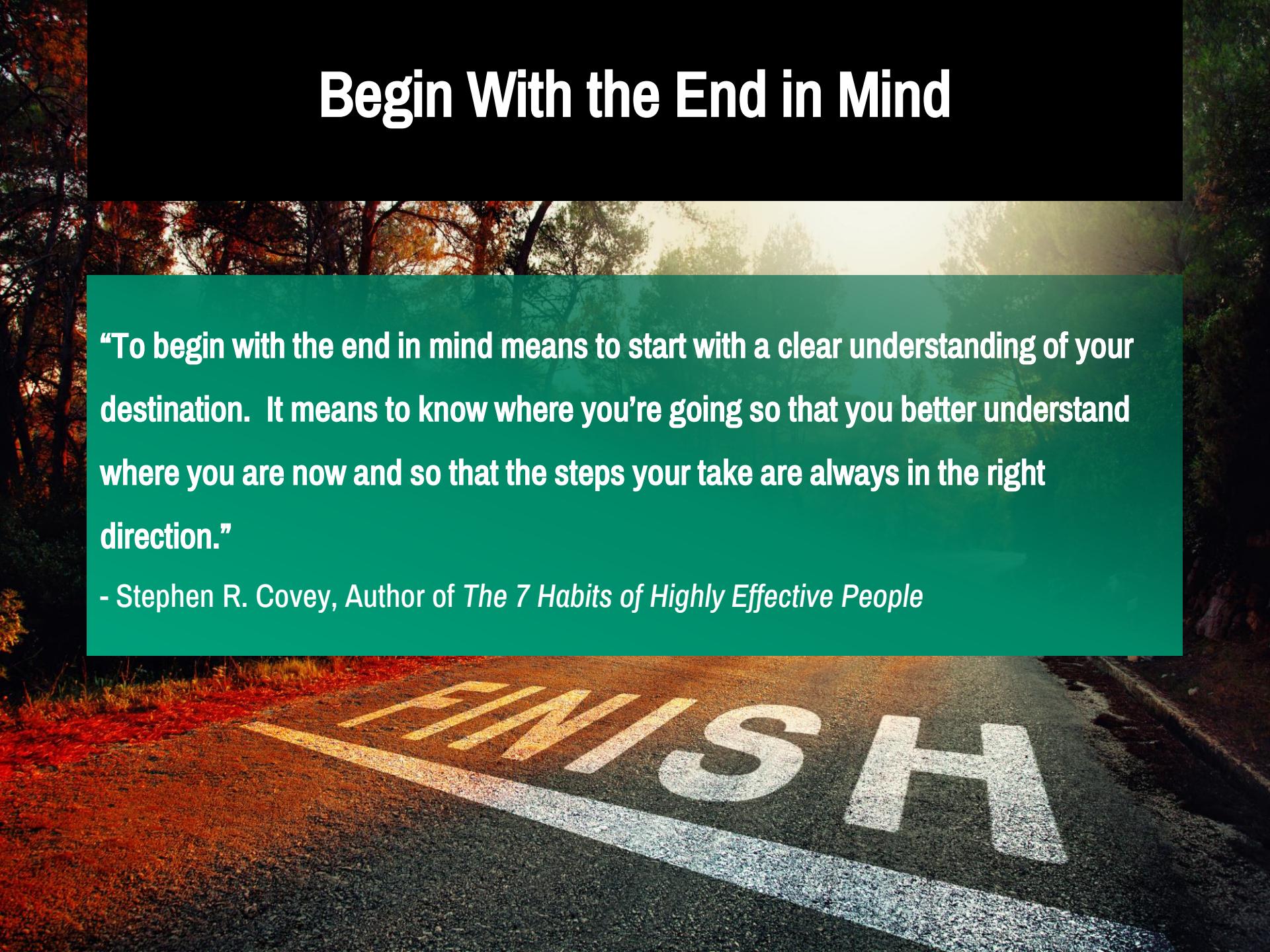
**Give me a minute.**

# Effective Communication Within the IEP Team

Together  
Everyone  
Achieves  
More



# Begin With the End in Mind



“To begin with the end in mind means to start with a clear understanding of your destination. It means to know where you’re going so that you better understand where you are now and so that the steps you take are always in the right direction.”

- Stephen R. Covey, Author of *The 7 Habits of Highly Effective People*



# Begin With the End in Mind



What is the ultimate goal for the student at issue?



Where is the student at this point in his/her development in relation to the goal?



What are the next steps for the student to effectively progress towards that goal?



How can we effectively communicate our intent within the team?

# What is Effective Communication?

## Effective Communication . . .

- Is more than the exchange of ideas or goals
- Conveys an intent and emotions behind those ideas and goals
- Is inclusive of all parties
- Is non-accusatory in tone
- Includes listening

# Why Is Effective Communication Important?

## BECAUSE . . .

IEP teams are always evolving

Sets the tone, not only for the student's education, but the student's pathway after school as well

Ensures consistency and vision are maintained as the team works toward the goal for the student

# Ineffective Communication

- Lacks Preparation
- Not Engaged / Eye Contact
- Adversarial / Technical Language
- Interrupting

No

- Reading Documents to Participants
- Failing to Answer Questions
- Jumping to Conclusions
- Inattentive Body Language





## Initial IEP Meeting

- Parents do not know what to expect and are unprepared.
- Teachers are pressured to prepare documents and lead the meeting.
- IEP is read to the attendees.
- Parents question alternative method and are told the school doesn't have knowledge of this curriculum.

## School Year

- Daily reports are good, although the student is not making satisfactory progress at reporting time.
- ESY is recommended.
- Parents demand to know why their child is not improving; they look to the teacher for answers and ask for additional services.
- No changes are made; student continues not making progress and even begins to regress.

## Annual IEP Meeting

- It is recommended that student be held back and goals are carried over from previous year.
- Parents object and are told there is nothing that can be done at this point.

## After IEP Meeting

- Parents feel they are not being heard and turn to administration in frustration; they are told there is nothing that can be done at this point.
- Parents consult outside sources for how to go forward and eventually file a complaint.

# Effective Communication

Prepared

Engages / makes eye contact

Respectful listener

Has read IEP prior to meeting

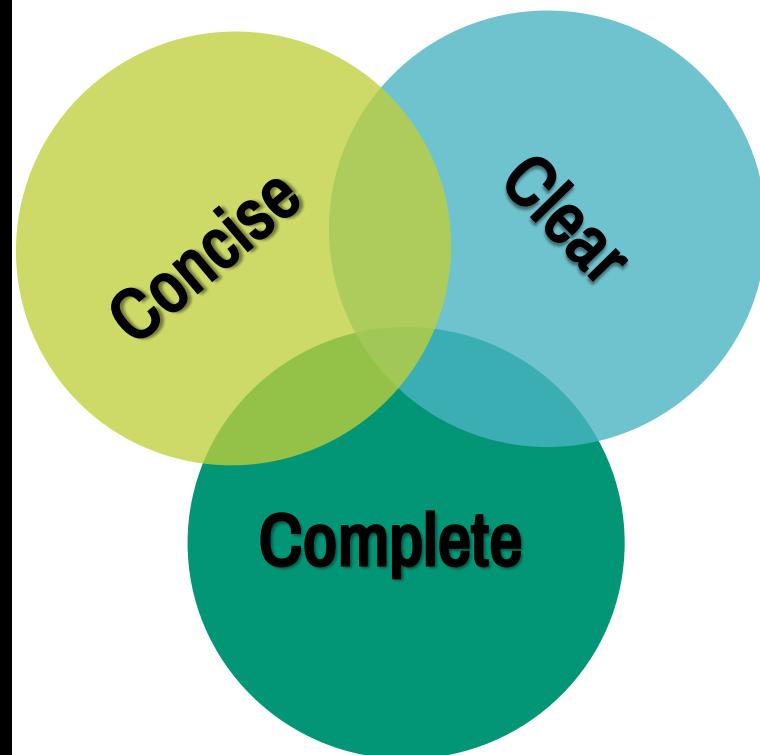
Answers questions or sets deadline to find answers

Contemplates the motivation behind requests

Non-adversarial/technical language

Attentive body language

Clear, direct requests in writing





## Initial IEP Meeting

- Parents have prepared for IEP and have reached out to the team ahead of time.
- Teachers have prepared for meeting with the parents' perspective in mind.
- IEP draft has been circulated prior to meeting, saving time of reading the entire document.
- Parents question alternative method. While school does not currently implement such method, it is agreed that research will be done, and a recommendation will be made by a pre-set date.

## 1<sup>st</sup> 9 weeks

- Behavioral reports are good, although the student is not making satisfactory progress.
- Teacher has researched the alternative method and will start implementing some of the ideas.
- Parent requests informal weekly updates, and teacher agrees to weekly emails.

## Mid-year Meeting

- Student has begun to make progress towards goals but will not meet the goal by the end of the year.
- Teacher believes that the child is at a critical point of instruction and recommends Extended School Year.
- Parents are prepared for meeting based on weekly updates and agree to ESY.

## Annual IEP Meeting

- Parents write statement for inclusion in the IEP.
- Teacher incorporates parental input and provides a draft of the IEP to all team members at least 24 hours ahead of time.
- Team members are prepared for the meeting, and goals are set for the upcoming year through a collaborative effort.

# Communication: A Better Way to Say Things

Oh, we see that with all of these types of kids. Here's what you need to do.

We just don't have the resources for that...

We only have 45 minutes, so let's make this quick...

Your child just can't do this.

The BIP was created by the FBA and is required by FAPE.

In my experience, this is not an uncommon occurrence. What I would recommend...

We do not currently have that resource, but we can explore options...

I want to make sure all of your concerns are addressed...

Your child has particular difficulty with...

As a result of the assessment, we've been able to come up with this plan...

# Communication: A Better Way to Say Things

You have to teach the way she learns.

My child responds best when teachers implement a multi-sensory approach.

You will put my child in a general education class immediately!

I would ultimately like to see my child in a general education class.  
How can we get there?

But my child does this all the time at home!

OK, we've seen our child do this. What could be causing the inconsistency?

You just aren't teaching him!

What can we do to at home to help achieve the IEP goals?

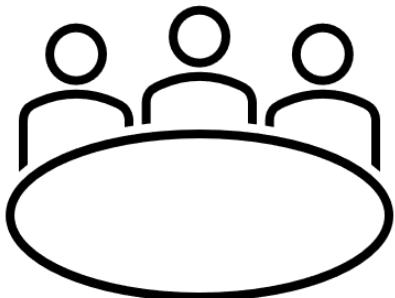
You aren't offering solutions. You will be hearing...

I really think there must be a better answer to this. Can we work through this?

Sometimes, even after cooperation and collaboration, involving a lawyer may be the right thing for your situation.



# Questions & Discussion



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