

PARENT MENTOR OF OHIO FALL 2009 CONFERENCE

October 8, 2009

Q & A WITH Ann Guinan, Assistant Director, Procedural Safeguards/Support Services, Office for Exceptional Children, Ohio Dept of Education

Below are the questions from participants submitted ahead and other comments during the session and answers given by Ann Guinan

Should transportation be on every child's IEP?

- **No. Transportation is a related service that has to be related to the child's disability.**
- **Transportation is provided to a child because some disabling condition prohibits them from accessing transportation that is provided to all other students.**
- **All preschoolers are not entitled to transportation. Preschoolers are provided transportation as a related service, only when the child's disability makes it a necessity.**
- **The same transportation rules apply for children ages 3 through 22.**

The short answer is no. There seems to be some confusion with preschool. Preschool is not treated differently for transportation. The same rules apply for children ages 3 through their 22nd birthday. We need to work with families to ensure that children have what they need, but there is a difference between best practice and minimum requirements. Identify what the law requires of the district. The district can always go above and beyond the minimum requirements, and OEC strongly support districts doing that. OEC also supports Districts and families working collaboratively to make sure that children receive what they need to be successful. That is the whole intent of the law. OEC is concerned with minimum compliance. Transportation is a related service that has to be related to the child's disability. Transportation is provided to a child because some disabling condition prohibits them from accessing transportation that is provided to all other students. Are they in a wheelchair? Can they not get up the bus steps? Does their behavior make it dangerous to transport them? Is the child not able to find their way to a bus stop, not able to navigate traffic safely to avoid getting hit by a car, and to find their way home? Transportation should be directly related to the child's disability. In preschool there is a legend or folklore surrounding preschool transportation that all preschoolers should receive transportation. This is not true. Does the child's disability require transportation? Occasionally, districts may identify a family in crisis they know will not be able to get the child to school. It has nothing to do with the child's disability. This becomes a district decision as to whether they will transport or not. They would need to use their best judgment. It is not required by law.

When a school district doesn't have a speech therapist, and my child's IEP says they should have speech, what are my options?

- **The district needs to address the issue with the family, not ignore the problem.**
- **Schools and parents should work collaboratively to come up with an acceptable solution.**
- **Providing the child compensatory time is OK for services that will be interrupted for a short period of time- one month or less- but would not be acceptable for longer periods.**
- **The district must provide speech services in such a way that the child receives FAPE.**
- **The district may contract with a private therapist in the child's community, double up services with another district, or contract with a private company who would send a therapist to the school.**
- **The district is ultimately responsible for the service and must ensure that it is provided within the guidelines of federal rules and regulations, certification, safety, etc.**

This does happen. Unfortunately, we have a supply and demand issue, not just in Ohio, but nationally, particularly in certain areas of related service: Speech, OT, and PT. Sometimes districts are trying their very best to find somebody, but just simply can't. This is something the district needs to address. If they don't have a speech therapist the district needs to work with the family and address it, not pretend that it isn't happening. If the district does that, they end up having to do it after the fact, and it's actually more trouble than if they address it head on. There are a number of options. The district and family need to work collaboratively. The child's speech services need to be provided. Some districts double up with other speech therapists. That is fine. That has to be worked out and schedules have to change. Another option is, if it is going to be a very short period of time, say less than a month, and they are hiring someone, or someone is out sick and they will be coming back soon, and they will be able to make up the time; compensatory time is fine. We don't recommend that if it is going to be 2, 3, or 6 months because then the child has lost too much ground and then they can't catch up. If there will be a lull for 3 or 4 weeks, then they need to discuss this with the parent. If they don't, there may be a complaint that lands in my office, and it could have been solved by the district having communication with the parent. The final option is that the parents may go to a private speech therapist, have the private SLP provide only the services on the IEP, and then bill back to the school district. Parents should be cautioned to not just go do that without first discussing it with their school district. Say, "My child is not receiving speech. You have no SLP for the next 3 weeks, and here is my option for resolving that." Make sure you talk about rates, etc. ahead of time. School districts may pay a lower rate for services than some private speech therapists charge, so they have to have that discussion, and it has to be worked out ahead of time. The bottom line is that the district must provide speech services, and it must be provided in such a way that it best fits the child, and provides the child FAPE for that year. Convene an IEP meeting and address the issue.

Comment from Audience:

Some districts are contracting with private clinics that send a speech therapist to the school to provide services.

This is fine. Districts may contract with whomever, to provide whatever service that needs to be provided. Districts just need to be cognizant that depending on the service, the provider would need to meet certain requirements. This probably wouldn't be an issue with related services such as Speech, OT, and PT, but for other services that are contracted out, it could be an issue. The district who is contracting with a provider for special education services should make sure that there is an agreement that states that the provider follow all federal rules and regulations, certification, safety, etc. The district is ultimately responsible.

How long can RTI be in place before identification and services are provided?

- **RTI is a regular education initiative, used by some districts in a regular education environment. It is not special education.**
- **It is a method of intervention for any child that is not keeping up or who is not meeting grade level content standards.**
- **RTI provides an intensive look at the interventions we have provided the child, and measures objectively, through data and documentation, those interventions.**
- **Assessment of whether or not the intervention is working should take place on a regular basis- every week or every other week- not every 9 week grading period.**
- **If the child is making progress over time and we can see the child moving toward the grade level standards, no disability would be suspected.**
- **If the child fails to make progress over time and the interventions start to look like special education, a disability would be suspected, and the district should initiate the evaluation process.**
- **If the child is not making objective progress that is documented or is regressing, the team needs to look at intensifying interventions or going to evaluation.**
- **The process should not take years, but weeks or months.**

RTI, believe it or not, is not the bad guy. Response to Intervention is a research-based method of helping and assisting children, and is also very helpful in determining disability. So, we don't want to think negatively of RTI. RTI done correctly is a wonderful thing. The problem is, as it is with all wonderful things, it can be abused and misused. That's what we have to guard against, not the use of RTI or interventions when a child is struggling. RTI is not special education. RTI should be in a regular education environment. It should be a regular education initiative by the district, and it really has nothing to do with special education. RTI in the form that it is supposed to be used, is a method of intervention for any child that is not keeping up. We have content standards at every grade level. Are children on task and at grade level for content standards? And if not, intervention is indicated, and how does the district do that? Many of them use the three-tiered system. Some use a different system and it doesn't really matter, but intervention is good, and should be used across the board for all children who are not meeting content standards. Then, when we provide those interventions, it is not

a hit-or-miss, willy-nilly, let's-see-what-we-think-will-work-this-week approach. RTI is very structured and a somewhat rigid process, if done correctly. A team convenes and they look at data and documentation. It isn't an "I think..." or an "I guess..." moment. This is a "what does the data and documentation tell us? What do the assessments and tests tell us?" And then we look at that, and put in place supports that we believe will assist the child. It is critical that those are measured regularly: every week, every other week; not just every 9 week grading period. This is an intensive look at the interventions we have put in place and measuring objectively, usually through short-cycle assessments, those interventions. We will look at things like DIBELS for reading and behavioral short cycle assessments. It depends on the child. It should be a very intensive process and people should be measuring regularly. There should be a structure and a schedule, and parents should be receiving that information on a regular basis. If the child is not making progress, then we need to change interventions, and we need to do that fairly quickly. This should not take years, but should be done in weeks or months. If the child is making progress, then it may take years to speed up reading or math, or whatever. There needs to be forward movement and progress, and it needs to be documented, objectively. If the child begins to make progress and we can see that the child will move up to grade level standards, then we don't have to take the next step, which is suspecting a disability. We could put into place things that will support this child and that they don't need to be identified with a disability, which is the goal. If we put things into place, we change things and we intensify things, there is going to be a point at which the interventions that we are providing the child look-like, act-like, and walk-like special education. If we get to the level of intervention that looks like special education, then we suspect a disability and move into the evaluation process. I understand parents' frustration since it is abused, and I have heard the horror stories about the child that has been in interventions for 2 years and has made no progress. When I question the parent or the district: "What kind of short-cycle assessments were being done? What objective data is being collected and on what schedule? How many times did the parent meet? How many times was the parent involved?" None of those questions is answerable by the group that was there. They were actually not doing RTI. Do they know what they are doing? Are they doing RTI, or are they doing something else? That is really important to understand and know. Interventions are not bad. RTI is not bad. When done well and done right, RTI is a wonderful tool for districts to help children and families. When done incorrectly, it delays actions that need to be taken. How long? If the child is not making objective progress and that is documented, or if there is regression, that should be a red flag. Do we need to intensify interventions or move into an evaluation? That is a team decision. A child receiving interventions over 2 years and not making any progress and then calling that RTI would not be accurate.

A student had an IEP last year and received all "Fs" on report cards and was retained. Can a child be retained without parental approval?

- **The local school district has the final say as to whether or not a child is retained, even over parents' objections. ODE/OEC does not get involved.**
- **The child's IEP Team should discuss the issues relating to the child's poor grades and provide interventions, as appropriate.**
- **Parents who disagree with the school's decision to retain their child should address their concerns with their local school board.**
- **When the horse dies, get off the horse! (Don't keep doing what does not work.)**

Yes, they can. OEC does not have any jurisdiction over retention or going on to the next grade, neither does ODE. That is a local district decision/ local board of education. The local school district has the final say. You would want to go to your local board if have an issue with retention, or if the parent did not want the child promoted because they were not ready to be promoted. That is a local problem that has to be addressed at the local level. No child should receive all Fs without some form of intervention happening and somebody understanding what is going on with that child. This is a much bigger concern than the grade level of the child. Is the child not coming to school? Is there a crisis in the family? Is the child sitting in class not doing work? Why are they not doing work? Is it because they cannot read or they don't understand? Is it because the child's behavior is so out of control that they cannot learn? How are we going to address this issue? What are we going to do differently this year to address whatever is going on with this child? I would be much more concerned with the child making all Fs, as opposed to the grade level that the child was being retained in. We need to focus on the important things.

Can RTI by itself, be used for identification of a child with a disability and if so, how?

- **No single factor can be used identify a child with a disability.**
- **The RTI process could be used if it were sufficient and multifaceted enough to address everything that may be having a negative impact on the child's learning. If it did not meet these requirements, it could not be used.**
- **The child's ETR Team would decide what information needed to be collected to determine the child's eligibility.**

No single factor can be used identify a child with a disability. RTI is a universal blanket term for a whole bunch of stuff that went on. It depends on the intensity and the breadth and width and depth of what we are calling RTI. It has to meet the definition of multifaceted. Can the child see? Can the child hear? What is the cognitive functioning of the child? If the RTI process is sufficient and multifaceted to address the issues, fine. If not, no. We would have to go beyond RTI. You have to look at anything that could impact negatively this child's ability to learn. It doesn't mean you have to test for everything, but it does mean you should be talking about everything that could possibly interfere with this child. What do I assess? I assess what the team says, "we need more information in that area," and "we do not have enough information in that area to make a judgment call." We used to require a laundry list for each category, which was a gross waste of time and money, because in many instances the child did not need that laundry list of testing. Now, we leave that up to the IEP team. What tests, what assessments, and what data do we need to make a judgment call? We should have a lot of data and documentation long before we get to testing, because we have gone through an intervention process, whether it is RTI or some other form of intervention, although not mandated. We have gone through the intervention process, collected data, and we have that to go on to the next step.

A child has a one-on-one nurse by a private company. The private company refuses responsibility and the district wants the private company to be responsible. Who is responsible?

- **The school district of residence is always responsible for FAPE.**

It is the district of residence. It is always the district of residence. 3301-51-01(A)(2)(a) clearly spells out that the district of residence is responsible. There are a couple of exceptions but I won't go into them here. If the district of residence contracts for services with any service provider- it doesn't matter which type of service provider- the district is responsible. They must ensure that the nurse is correctly credentialed, correctly trained, and that the nurse is correctly implementing the IEP as written. The district of residence may, through the contract, say to the private company, "We want you to supervise this. Here are the criteria, and we want you to make sure that your employee meets that." That's fine. The bottom line is that the district is in the driver's seat and the district has to provide the service. It would be up to the district to make sure that it is done correctly and per the IEP.

What rights do parents have in regards to access to their child's classroom and school buildings, visitation and volunteering?

- **ODE/OEC sees this as a local issue.**
- **Unless there is something different required by the child's disability and documented in the IEP, the parent would need to follow the local policy and guidelines on visitation and volunteering.**
- **If the child's IEP documents an allowance for the parent and that allowance is needed for the child to receive FAPE, the parent could be excused from the local policy and other guidelines.**
- **Parents under a restraining order may be barred from entering the school.**
- **School districts may not discriminate against any parent or groups of parents and must treat all parents equally.**

This is a district decision. ODE/OEC does not get involved in this. Most districts have a visitation/volunteer policy with rules, regulations, and guidelines for parents who are entering the building. Particularly in this day and age and with all of the things that have happened, in order to keep children safe, many buildings are locked. You have to go directly to the office and you can only enter at a certain door. Parents have to wear ID badges. There are all kinds of different safeguards and policies and those have to be followed in the district. Sometimes parents of children with disabilities need some flexibility or latitude. That is an IEP Team decision and that needs to be discussed at an IEP meeting. Why do you as a child with a disability need to receive something different from, or in addition to the volunteer policy? If that is actually necessary, then allowances will be made per the IEP. That is something that can be discussed in the IEP meeting and determined. Unless it is decided at an IEP meeting that it is a necessity for that child to provide FAPE, parents are bound by the visitation/volunteer rules that the district puts into place. The rules, policies, and guidelines have to be fair. You can't have a certain group of parents being given carte blanche to come in whenever they want, and another group of parents who are never allowed on the property. If a restraining order has been filed against a parent, this is a court order that must be followed. Barring a restraining order, the district needs to treat all parents equally and the same.

Questions from Audience:

What does the district do when parents have a custody agreement and one parent declares that they don't want the other parent to come to the school?

- **In joint custody, both parents have equal rights, unless the custody agreement says otherwise ...**
 - to be at the IEP meeting**
 - to visit the school**
 - to have access to all records**

- **Non-custodial parent has limited rights...**
 - to have notice of all meetings**
 - to participate in meetings**
 - to attend meetings and be part of the discussion at the meeting**
 - Does Not have decision-making authority**

The non-custodial parent has rights under the law, just as the custodial parent does. If there is joint custody, those rights are equal, unless the custody agreement says otherwise. In joint custody, both parents have a right to be at the IEP meeting, to visit the school, and to have access to all records. Both parents are treated just exactly as they were treated when they were married. If one parent has custody and the other parent does not, the other parent still has the right to notice of all meetings, the right to have access to all records, and can still attend an IEP meeting. The non-custodial parent cannot be a decision-maker. They can give their two cents, but they don't have any authority to make a determination or decision in that meeting. Can they come? Yes, unless there is a restraining order against them, in which case they can't. Can they be in the building? That is a local policy decision, but the district cannot discriminate against people. They have rights. So, unless there is a restraining order against that person, that person can be in the building like any other parent can be in the building. Parents without custody still have rights, although they are limited rights. The district is bound to abide by the custody agreement and parents should share this information with the district. When custody agreements change, parents need to inform the district. The district cannot act on something they don't know about.

Guardianship is slightly different. It is very specific to the court order. It is important to read the court order to know what rights were conferred on that guardian and what rights were not.

What rights do parents have to see videotape from the school bus? The child was mishandled by an aide on the bus and the district refuses to let the parent view the video for confidentiality reasons.

- **The district must keep confidential the identities of individual children recorded on videotape, and may not release the tape to any parent, unless given a court order to do so.**

These usually go to court. I have seen these cases and it depends on the factual pattern of the case and the judge. The judge may order the district to release the video or not to release the video. The district

cannot release to any parent, a video or any other information that would show the identity of other children. The district would not be permitted to release the video unless ordered by the court to do so. The district is correct in not sharing the video when there are other children on the video.

How does ODE's Procedural Safeguards Office interpret the disability having an adverse impact on a child's educational performance, when making eligibility determination for special education? Is educational performance simply measured by academic, or is it broader than just academics?

- **OEC tends to be conservative and views the Sixth Circuit case, Rowley, as the standard.**
- **OEC will look at everything that presents that gets in the way of the child's learning. This would be primarily academics, and could include emotional and social, but only when it impacts the child's ability to learn.**

In the Sixth Circuit, Rowley has recently been upheld as the standard. In the Third and Ninth Circuits, they have case law on the books that says that education is more than academics: social, emotional, and encompasses the whole child; it's not just academics. The federal regulations say that when there is a suspected disability, you cannot just look at grades and retention. You have to look at more than that. So, how is that interpreted? Some people interpret that phrase as a social/emotional, holistic view. Other people interpret that to mean you are looking at more than just grades. You are looking at: psychological reports, assessments, more than just vision and hearing, fine and gross motor, things tied to academics, and can the child learn? There are two camps. The Sixth Circuit is ultra conservative. We haven't had a new case, so until we have more case law, it is kind of hard to determine. I will tell you that OEC tends to be conservative and also tends to go where the Sixth Circuit is going, and the Sixth Circuit hasn't gone anywhere recently. It's going to be fairly strongly on academics and can the child access learning through the academics. Obviously, social/emotional and behavioral comes in there. If they are so off the charts, so severely depressed, so suicidal, that they are not coming to school, or when they are in school they are not making any progress, obviously that is going to be a consideration. Emotional disturbance is one of the 13 disability categories, so we are going to look at that. We are also going to look at people with vision, hearing, fine and gross motor, and are these being tested? What is going on there? So, that is the other thing. Also, as learning changes in the classroom, hopefully we no longer have scenarios like this, where someone is standing up there yakking at a group (of students) sitting in their seats. We have much more going on with group dynamics and group learning. If we have someone who cannot get along in a group, cannot participate, cannot learn in that environment, then there is that social part. We get into that, but we don't go as far as the state of Maine. A child was getting As and Bs, had friends, was doing fairly well but was somewhat isolated- she wasn't a very outgoing person, pretty introverted. Parent's said she had some social problems, the court agreed and made her a child with a disability. You would have to go to due process to get that. We would not go that far. We will look at everything that presents that gets in the way of the child's learning, which could be emotional and social, but would still have to impact learning, not just that they are off the charts at home, but they do fine in school. We would not address that.

As a follow-up to this...

You may have students who present with mental health issues. They've done fine- better than fine- in terms of grades and accessing curriculum, but have significant social/emotional/behavioral issues. For the most part, we will not address that in a complaint scenario because they are already making progress. We also have now, or will be having senior projects, volunteering, and a bunch of other stuff that is going to be measured; there will be a lot more measured than just pencil/paper tasks in order to graduate. When those things come into play, if these severe social /emotional/behavioral issues get in the way of volunteering and getting those hours or doing that social project and getting it done to graduate, then yes, that will be one of the considerations when we look at "did the district do it correctly?" Its going to be real individualized based on the child.

Eligibility/IEPs for students with mental illness.

OSEP has made it clear that students may be eligible for special education even if they are not failing and are advancing from grade to grade. And, I would agree with that. Yes, that is a possibility. But, it depends on how we are going to talk about failing and advancing grade-to-grade. If I've got Bs across the board and I'm getting credit, is that good enough? I would say, no. If I'm getting Cs, advancing grade to grade, and I'm on track for graduation, probably, yes. The other things we look heavily at are the state assessments. If this child supposedly is doing fine but is excused from all consequences of the state assessments, that is a huge red flag for us, because then the child is not doing fine. Our belief is, unless they are cognitively disabled, they should do that test and they should be doing it successfully. We always ask for those scores. If the team has excused that, then it is going to pull that in. That is how we would probably address failing or advancing grade-to grade: What do the state assessment scores look like? What do the district-wide testing scores look like? And, were there severe accommodations made for that kind of thing?

When completing section 7 of the new IEP forms there is a decision that must be made about participation in small group, or one-on-one, or co-teaching. Or do they need to be more specific in mentioning methodology, like direct reading instruction and direct instruction in comprehension?

- **Methodology does not have to be documented on the IEP.**
- **Methodology should be scientifically research-based and determined to be appropriate for that individual child.**
- **How and where the services are provided needs to be clearly identified.**
- **Amount of time that the service will be provided should be specific.**
- **Specifying that the service will be provided "as needed" is not acceptable.**

They do not need to mention methodology. That has been clearly determined by the courts. And, if there is methodology, almost always the district wins those cases. If the methodology the district is using is not scientifically research-based, they are going to have to tell the judge why they are not using a scientifically research-based methodology, and it goes pretty hard against them if the parent can show there is a research-based methodology that does the job, and does it better. Districts pretty much win the methodology and, no, they do not have to put the methodology on the IEP. They do

have to put what they are doing, small group, one-on-one, etc. And, they can't put them all in there together (small group, one-on-one, large group) because then I have no idea what is going on. I can put on there different types of service if I delineate when it is going to happen. (Example) I have a severely autistic child with severe behaviors, and some days are good days and that child is fully included in the regular classroom and things are fine. Other days are bad days, and that child cannot be in the regular education classroom. They need a quiet place with no stimulus, no noise. So, the IEP will say things like, "child will be in the regular education classroom for this goal; however, if the noise level exceeds whatever, and the child begins to have behaviors because of that noise, the child will be removed to a quiet place and receive one-on-one instruction." We do have to have that latitude for the emotionally disturbed population, the autistic population, and in some cases the cognitively disabled population, because they have great days and they can be 100% in the regular education classroom, and then other days that is just not a good place for them and they need something else, based on that day. The IEP needs to be very specific, it can't just say, "regular ed. and one-on-one instruction, as needed." They have to tell me when it is needed. "When the noise level gets to a point where this child is reacting negatively to that noise level, the service provider will remove the child to a quiet place where one-on-one instruction will take place in the following areas..." It has to be specific what is happening, so I know when the child is going to be in regular ed. and when the child is going to have one-on-one. And, then I need minutes. If we decide that the child is going to have one-on-one instruction, I need a ballpark of minutes. You could do ranges. You could also do "210 minutes every 6 weeks." Then, that gives you the latitude. There will be a minimum, and it may be more, depending on whether we have lots of bad days. But we know that we are going to have at least this many bad days. So, we are going to give "210 minutes of direct, one-on-one instruction in the next grading period." That is fine. That way, I also know how much one-on-one I'm getting and how much group I am getting. I can also do a range. I can do 200 – 250 minutes, as long as it isn't always 200 minutes. If I'm doing a range, I'm going to use it. If I'm not going to use it, don't put it in there. Give the lower number if that's what you are actually going to give.

The parent wants an IEP for a preschooler and the school says the accommodations are already being made without an IEP and that the child, who has limited vision but is intelligent, is not disabled. Can a 504 plan be used for preschoolers, or is there another way to service this child? Can we use a service plan for him? The parent is adamant about having an IEP.

- 3-6 year olds can be difficult to test and get accurate results.
- It is critical that children be at grade level, and if they are not, that they receive interventions to address their learning problems.
- The earlier that those interventions are provided, the more effective they are: 30 minutes of interventions provided to ages 3- through 3rd grade are equal to 2 hours of interventions at 4th and 5th grade.
- A child who is not at grade level is not necessarily a child with a disability.
- A service plan is for children attending chartered and non-chartered nonpublic schools, and children unilaterally placed in private schools by their parents, NOT children in public school.
- IEPs are only for those children eligible for services through IDEA.

- **Districts may use their own plan as a part of the intervention process, but it would not be a service plan or IEP.**

It is very hard for me to comment on this because it is a specific child, a specific case, and I don't have all of the issues. We try very hard not to identify children as disabled, unless they actually have a disability. For little people, the 3-6 year olds, that sometimes is very hard to determine because they don't test accurately on objective testing, because they are just so young. They are also growing so fast and their brain is changing so quickly that it is very hard to keep track and keep up. We would rather err on the side of no disability, than err on the side of disability. We are also very cognizant of testing kiddos early. We have to test them early and intervene. Here is what a normal 3 year old should be doing and should be on task. Is this child on task? Are they at the level they ought to be at? If they are, fine. If not, whether they are in a special ed. facility or not, what do we do to intervene, and how will we intervene to address that child? Especially in the lower grades, it is critical that those kiddos be at grade level. What we have found and I think is still true, but was a couple of years ago, that Preschools did a marvelous job. We had 5 year olds coming in, pretty much across the board, on level. Things were great. Because they were on grade level, then the schools said, "Well, they are on grade level, so they don't need anything, so we aren't going to identify them..." And, then they weren't identified, and in grade 3 they were identified, and by that time they were so dismally behind that they never caught up, and they never reached what they could have reached if they had received services. Schools need to look at, if the child is at grade level, then why is the child at grade level? What have they been doing? And, in our regular education environment, is that level of support going to be there? Do we support that level? If we don't, then we need to look at- we don't need to necessarily suspect a disability- how are we going to maintain that level of support if we begin to see the child slip in the first 9 weeks, first grading period, second grading period? Ok, we are going the wrong way... we are going down. We need to go the other way. What and how are we going to address that? And, not wait until second or third grade. Reading and behavior are the 2 critical reasons why children are labeled as disabled and end up not successful. If we can nip those two in the bud, in the age 3 through third grade era, it is dramatic. People heard in the Leadership Conference that 30 minutes of intervention at this level is 2 hours of intervention in 4th and 5th grade. You can do so much, with so much less. It is critical that that be addressed. Should every preschooler be identified with a disability if that is not where they need to be? No. But, do we need to address that they are not where they need to be? Yes, we do, at some point or another. Those are the conversations that parents and schools have to have. No, you cannot use a service plan form. The service plan is for chartered and non-chartered nonpublic schools and unilaterally placed children by their parents. That is a very specific form for a very specific reason and that is the only time that form is used. IEPs are only used for children who are eligible under IDEA. Can I have another kind of plan that the district does as a part of the intervention process? Absolutely, you can, but it won't be an IEP or a service plan.

Seclusion/restraint rules. Will this cause a problem for teams needing a chill-out room for kids with autism, a room not used as punishment, but as a proactive deterrent to meltdown?

- **By Executive Order, prone restraint is prohibited.**
- **Secluding children in locked areas and leaving children alone for the purpose of seclusion is prohibited.**
- **Transitional hold is allowed when done appropriately, but only when the child or others are in danger of harm.**
- **Staff must be trained and adhere to specific requirements.**

Read the executive order. It's narrow. It prohibits prone restraints. It identifies it very well. Transitional hold is explained: face down on the ground, brief, no pressure on the back, should only be used if the child or others are in danger of harm. Staff must be trained to do hold. There are a whole list of requirements. The governor has a team (includes ODJFS, ODH, etc.) that will create a policy around seclusion and restraint. There will be no problems having and using time-out rooms, if they are used correctly. Absolutely NO bolted doors, children locked in room, children unattended, even for a second. The room would have to be used in a positive way, not for punishment. Staff need to be trained in positive behavior support.

Can the IEP expire?

- **IEPs must be updated at least annually, every 12 months, and can be out-of-date or "expired."**
- **IEPs can be dated for less than twelve months.**
- **Children who enter the school district with documentation of a disability should be treated as if they have a disability, even if those documents are out of date. The district should immediately identify an evaluation that is less than 3 years old and a current IEP, and if those are not available, conduct their own evaluation and get an IEP in place, as quickly as possible.**
- **Children who enter the district without documentation, and No documentation can be discovered, can be treated as any regular education student.**

Yes. All IEPs expire in 12 months. Then, an IEP meeting is required. It can be done more often than that, based on the needs of the child, but it must be done every 12 months. Now the question is, I think, if the child has presented with an IEP that is no longer valid... the child has 1 hour of home schooling, or went to a private school that didn't do IEPs, or the child has been to 15 districts in the last year, or the child has been off to a detention facility and fell off the face of the earth -which by the way, they can't do. I'm now presented with a quote-unquote expired IEP. The effective dates are no longer in place. What do I do? What we tell districts is that they need to immediately either find an evaluation that is less than 3 years old or conduct their own evaluation. In some of these scenarios where the kid has been bounced all over the place, it's easier to find a needle in a haystack, so it's easier to just redo the evaluation. They need to quickly do the evaluation and get an IEP in place. Now, do they have to do anything while they are doing this work? That is a gray area. OSEP has said, if the district does not have any documentation that this is a child with a disability, (The district is being told

that there is an expired IEP but nobody can find one. There aren't any documents. They can't find an ETR. They can't find an IEP, expired or not...) even though the mom may be saying that her child had something, that child does not need to be treated as a child with a disability. If there are documents, no matter how old they are, OSEP has said that child must be treated as a child with a disability. And, those documents must be brought up to date as quickly as possible. And, services to the best extent that the district can do it, have to be provided during that period of time- equitable services to the old IEP. In some instances these IEPs are ancient and are not even close. The district is going to have to use their best judgment as to providing what that child needs while they are getting the work done. If there are no documents, they do not need to treat the child as a child with a disability.

The school district says they assess receptive/expressive language, but do not, and are not required to assess articulation, and do not provide that service for preschool children. Is this true? If this is true, where does it say they do not have to assess articulation? If they are required to assess articulation, what are the guidelines to determine eligibility, if they do assess?

- **The district first needs to determine if they do, or do not suspect the child of having a disability.**
- **If they do not suspect the child of having a disability, they should provide the parent with Prior Written Notice. If the parent disagrees, they can ask for mediation, file a complaint, or request due process.**
- **If the district does suspect a disability and they agree to go forward with the evaluation, it is the Team that will decide what tests are necessary, based on how the child's issues affect their learning and social/emotional development.**
- **Parents should discuss with the district's speech language pathologist the difference between articulation and phonology, and normal articulation development in young children.**
- **If the parent disagrees with the results of the evaluation, the parent may request an Independent Educational Evaluation.**

This again, gets down into the nitty gritty details and I really cannot answer this question. What the district is required to do is determine, do we suspect a disability for a given child? Why do we suspect a disability or why do we not suspect a disability? The problem is that articulation has kind of gotten a bad rap over the years. Years ago, when we didn't have children presenting with such severe needs as they are today, for whatever reason, there were a lot of speech kids that just didn't say their Rs or their Ts correctly, and they got special education. Those days are pretty much over, because most children will self-correct the R and T as they get older. It's basically just a matter of age. Some of it is just a matter of growing up and growing older. Other articulations are something that does signal something going on. That is why we have speech language pathologists. That is what they are trained to do. They are trained to determine whatever is presenting. Is this a serious issue that needs to be addressed, or is this an issue that the child will with time, outgrow? That is part of what the team determines and decides. If the parent disagrees, or isn't sure about what the speech language pathologist is telling them, and it is part of the suspicion of disability and they are doing it as part of an evaluation; they can have an independent educational evaluation, if they disagree with the determination. If the district is saying, "we don't think there is a disability, and therefore we aren't

testing,” and the parent believes there is a suspicion of a disability, then they have to file for a due process hearing or a complaint for us to look at it, or a hearing officer to look at it and make a determination. I also would suggest that Mediation is always good. You don’t have to be a child identified with a disability to have mediation. You can be a child that you suspect might have a disability. We provide mediation for those children. That would be a way to have an objective third party at the table to have that conversation. There are a number of options there. The district would not necessarily have to say yes, if the child can’t say an R or a Th, or had some kind of articulation issue, and therefore they are automatically a child with a disability. We counsel very strongly against that. We have to determine what is the cause of this, is it indicative of a possible disability, and how does it affect the child’s ability to learn? How is it affecting social/ emotional and if it is not, does it need to be addressed? Those are all hard questions that the IEP team needs to work on.

Comment from Audience:

People should ask their speech therapists about the difference between phonology and articulation. Phonology under the American Speech and Hearing Association is an expressive language delay. Articulation is a speech delay. Unfortunately we are using the definition that is in our Whose IDEA Is This? That says stuttering and articulation in there. Most speech therapists will not provide articulation therapy until after 1st grade. If there is a phonology problem, the speech therapist will explain that in detail. Most articulation will not be addressed until age 6 or 7 because it generally will self correct. If it is phonology, then that is a whole other ball game.

IEP speech related services. How specific must the services be communicated on the IEP? Can a district put 80 minutes a month, per school calendar year for the frequency of speech services, or should they be more specific, such as 20 minutes per week? Does the IEP need to state where the services are being provided? Does the IEP need to state that it is consult, one-on-one, or small group? What is the definition of small group?

- **Services should be specific and clearly stated: what is being provided, where it is taking place, how often, for how long, and by whom.**
- **Services should be based on the needs of the child, not district convenience.**
- **Services are identified per each goal on the IEP.**
- **Service frequency can be listed as daily, weekly, monthly, or by quarterly.**
- **Statements describing where the service will take place, and if not in the regular education environment, a statement of why the service cannot be provided in the regular education environment should be provided. This identifies LRE.**
- **Services are not the place.**
- **Provide a description of how the service will be provided by indicating one-on-one, small group, large group.**
- **OEC’s definition of small group is 3 to 5 children.**

They can state by week, by month, or by quarter. It should be based on the needs of the child. If the child is going into speech for 20 minutes a week and the child needs 20 minutes a week, then that’s what it should say. If we need the flexibility to have 80 minutes a month, because some weeks we are

going to get 40 minutes because this is happening, and other weeks we will get 15 minutes because this is happening, then that makes perfect sense. There should be a reason, based on the needs of the child, not district convenience, as to why we are doing the range we are doing. 80 minutes is fine. I don't have any problem with monthly, quarterly, weekly, or daily. Those are all fine. As long as I understand what is going on. Yes, the IEP needs to state where the services are being provided. That is your LRE statement. The law assumes that all services are going to be provided in the regular education classroom. That is the assumption of the federal law. If something is not going to be provided in the regular education classroom: A.) the IEP needs to state that; and B.) the IEP needs to tell me why. Why can't the speech service be in the regular education classroom? What is wrong with that? It has to tell me where the speech service is going to be, (outside the regular education classroom in the speech room) and why the child will not receive the service in the regular education classroom. Because the federal law assumes everything be done in the regular education classroom and if it isn't then you are telling me why. And, in the new IEP form, it breaks everything down, because we have broken everything down by goals. So, each goal has the LRE statement. Each goal has present levels of academic achievement and functional performance. That is why, because people just were not catching that. They were getting dinged both in monitoring and complaints, so that is why we changed the form. You are going to have those statements for each goal. That is the whole point of why we changed the form. You are going to tell me where the services are being provided. And, the services are not the place. So, they are going to do one-on-one, and some days, depending on the schedule of everybody, services will be in the speech room, and some days in the tutoring room. I don't really need to know that. I just need to know it will be outside the regular education classroom, and then I need to know if it's going to be a one-on-one scenario, small group, or large group. Years ago, we defined small group as 3. That was the rule. It is not in the rules any more. Small group is left to interpretation. However, if there is a complaint, it is going to be my interpretation and my staff's interpretation- which is also my interpretation. It has to be small, say 3 or 4. I'm not going to be convinced that 8 is small group. I'm just not buying that one. For me, small group means 3 to 5 people. If you are going much above that, you don't really have a small group. Now I have seen- which I think is very positive- on some of the complaints we've received, when I have been doing the IEPs, small group within the regular education classroom. They are working with a group of students in that classroom and I think that is marvelous. I think that is great. And, it usually is just 3 or 4 students that they are targeting in that classroom. They are doing that very creatively so that there is no fallout socially, "OK, you are the dumb kid with the extra teacher..." There is co-teaching, everyone is getting what they need without any of the negative connotations that kids pick up on, and that is because of the positiveness of the staff and the working-together, collaborative nature of what's going on. I've seen some of that on IEPs. Obviously, those IEPs were in my office for other reasons, but I was very impressed with that. If it is only consultation, you should clearly state it is consultation, and that is a valid service. If the regular education teacher is providing a service, and consulting with the special education teacher, the intervention specialist, that's fine. But, everyone needs to know that is happening. And, it's not direct instruction to the child.

Preschool is outside of the district. Is transportation required? No normal place that preschoolers should attend without to and from provider fees.

- **The IEP Team determines if transportation is required as a related service, necessary to provide FAPE to the child.**
- **If the IEP Team determines an out-of-district placement is necessary to provide the child FAPE, the district would be obligated to provide transportation.**
- **Transportation identified as a necessary related service must be written into the child's IEP.**
- **Community schools are subject to the same transportation rules as public schools, in issues relating to children with IEPs.**
- **Parents who unilaterally decide to place their child in an out-of-district placement would not be entitled to transportation for the child.**

If the preschool is outside of the district, and the district's IEP Team has determined that is where the child is going to receive services- now that is very important- and it is determined that the child needs transportation as a related service, then they would need to transport outside the district. But, here is the qualifier: In an IEP meeting, the IEP Team has determined that the preschool that is outside the district is FAPE for that child and they are using that as their placement, and they have had conversation about transportation and determined this child does need transportation as a related service, and they are writing that into the IEP. Yes, the district must transport that child. Now, if the scenario was more like: the district is offering a placement within the district and the parent doesn't like it. They are going for a placement outside the district. There is no transportation on the IEP, or even if there is, you are on your own, because you have made the determination do go someplace that the IEP team has not agreed is FAPE. But, with those caveats, then absolutely. The district cannot place the child outside the district, saying this is LRE for this child, and yes the child needs transportation, and "oh, by the way, we're not providing it." That would not be OK. I couldn't imagine a public school district doing that. Some of our community schools have done that and we have talked to them and they have solved that problem. Most of the community schools are old enough now that even they aren't doing that. So, I would be surprised if this is still happening, but then I am surprised almost every day.

There is something in MRDD rules that says their program has to provide transportation. And, by the way, they are no longer MRDD. They are now just DD, developmental disabilities, no more MR. Do you think this is where the misunderstanding may have arisen?

Possibly. It could be. I don't oversee or regulate the Board of Developmental Disabilities or any of their agencies, so if they have that rule, they have to follow their rules. That would not impact, necessarily, districts. The district is still saying we are not transporting and if DD wants to, great. We are fine with that. But, we are not going to transport. Usually the Board of DD works very closely with the schools and I've gotten into a couple of these transportation scenarios, not necessarily preschool, and usually the Board of DD is not coming down to transport. But, if this is the case, in a scenario, that's fine. The DD Board may transport if that is part of their rule and they are required to for preschool. That is fine. But that would not obligate the district to do that.

When a child has been identified by a number of professionals with multiple diagnoses such as Autism and Down syndrome, how does the IEP team determine which category that child should be identified under?

- **The IEP Team determines the child’s disability category.**
- **The decision about the child’s disability category is made, based on which category “fits” the best.**
- **Children identified as eligible for special education may have services designed to provide FAPE, meeting all of their needs, regardless of their disability category.**
- **There are no “speech-only” IEPs.**
- **If there is disagreement amongst the IEP Team, the District Representative has the final say.**
- **Eligibility for the Autism Scholarship Program requires the child to be identified under the category of Autism, or if diagnosed with PDD-NOS, under any one of the 13 disability categories.**
- **Parents who disagree with their child’s disability category should receive Prior Written Notice from the District and may pursue dispute resolution.**

This is going to be an IEP Team decision. This has only become an issue because of the Autism Scholarship Program. The rules and guidance we have given districts as far as this scenario are: There are 13 categories of disability. It doesn’t really matter which one you are identified under. Under any of those 13 categories, including speech and language, the district is obligated to provide FAPE and address all of my needs, even if they don’t have anything to do with speech and language. So, I am on my speech-only IEP and my behavior goes out of control, all of that can be put on my speech-only IEP, because there is no such thing as a speech-only IEP. We can have IEPs with only speech services because that is the only presenting issue for the child and that’s fine. But, if something else comes up, I don’t need to write a whole new IEP, etc., I can simply add to a current IEP. Now, in some scenarios, the district wants to do additional evaluation because the presenting issues are impacting the child so significantly. And, they may determine to change the category and that is fine. But, for service purposes, it doesn’t really make a difference, because whatever the presenting issues of the child are, they must be addressed under the current IEP, and it doesn’t matter which category. Don’t sweat categories. Categories don’t mean anything. However, that was prior to the autism scholarship program where one must have the disabling condition of Autism or the magic six letters, PDD-NOS, to get into the program. You have to have one or the other. You have to have the magic six letters and the determination that you are a child with a disability under some category, or you have to be categorized as autistic. That is the only way in. So, now we have scenarios like this, where a child who is diagnosed as Autism, also has Down Syndrome, and what is the category? This is an IEP Team decision, based on a number of criteria. What we have said is this: Can the child be served appropriately in the program that the district has for either disabling condition? We have a program for children with autism and we use TEACCH, or we use ABA, or we use LOVAAS, whatever we use. And this child and most of the presenting issues would be addressed in that setting with additional supports and services. We are going to say the child is a child with autism and we are going to categorize him with that. Or, is the district going to say, No, that program really won’t address all of

their needs or the bulk of their needs. Yes, he needs parts of that program, but that's not really it. So, then we have a program for the cognitively disabled. We have supports and services. That really fits this child better. That really addresses their needs much better, so we are going to identify this child as cognitively disabled. Because, that set of supports and services are really what drives the child's IEP. Or, they may say, this child is so unique and has presented with such significant issues, neither program is going to address this child's needs. And, they have an adaptive behavior score in the severe or profound range- critical. They have to have an adaptive behavior score on a norm referenced test in the severe or profound range. So we have a child who doesn't really fit either category well and has this adapted behavior in the severe or profound range. We are going to identify that child as multiply disabled. It is basically a team decision and it's based on what fits the best. If there is disagreement in the team, the District of Residence's District Representative is the tie-breaker. Prior Written Notice must be provided to the parent. The parent can then go to the next step: due process, mediation or complaint. However, what is going to be looked at is not whether you can get into the Autism Scholarship Program, or not. That is not going to be the issue. The issue is going to be whatever was decided. Is the child receiving FAPE? And if the child is, you are going to have a very hard time winning the case. If in fact, they are not convinced with the services the child is being provided, the child is not making progress, and is not addressing their needs, then you would have a good case. Not because you can get into the Autism Scholarship Program, but because the child's needs are not being addressed. This is a very specific case that is going to have to be decided through the IEP Team process and then through the conflict resolution process after that, if there is disagreement.

Who provides transportation to a community school for a child on an IEP?

- **If transportation is not on the IEP as a related service, the district transports those children going to community schools in the same way they transport children going to chartered nonpublic schools.**
- **Community schools that are responsible for the implementation of a child's IEP must also be responsible for transportation, when listed on the IEP as a related service.**
- **Complaints regarding transportation can be filed with OEC.**

District people, correct me if I'm wrong, because these rules change about every three seconds. If transportation is not on the IEP as a related service, then the district transports those children going to community schools in the same way they transport children going to chartered nonpublics, is that correct? I'm seeing "Yes." OK. If you are attending a community school, then your DOR is transporting you in the same fashion that they transport children attending private schools, like the Catholic Schools or Lutheran Schools. That does not mean that you may get transportation, you may not, because they can take payment in lieu of transportation. If it is not practical to transport, they can get you a COTA pass and say you are on the public bus. Or they can actually transport on a yellow school bus. That is up to the district to make that determination. Yes, they have to transport, but it is a different type of transportation and is the same as those going to private schools. If transportation is on the IEP as a related service, the community school, not the DOR, must pay for and provide transportation. This seems to be a very hard concept, I'm not sure why. And in fact, we had a scenario not too long ago when we were looking at IEPs at a particular community school. One of the IEPs had transportation, and one of the issues was that the child was not being transported. The staff said -and

I'm sure it was because they were not told not to- that, "we just haven't taken that off... and, we always take that off every IEP that comes in and we just haven't gotten that off, yet." That would be, No. That is not how that is done. This is a complainable issue. If your child is in a community school, they got transportation previously- and you believe they still need transportation, based on their disability- and the community school is saying "No," that is a complainable issue and we can look into that and determine.

If a preschool age child does have a disability requiring transportation as a related service and the district places the child in a program not operated by the district, or not in the district's geographical boundaries, is the district required to provide transportation?

Yes. That goes back to what I was talking about.

If a preschool child does not have a disability requiring transportation, and the district has placed the child in a program not operated by the district or within the district's geographical boundaries, is the district required to provide transportation?

I would say it would be the same rules as for school age transportation. But, I'm going to take that back to Early Learning to make sure that is correct. It is a little different, because you are not required to transport preschool and high school, but you are required to transport elementary and middle school. I don't have an answer for that one.

Can you describe revoking consent? Can a parent decline a service on the IEP, for example, transportation? If services can be declined, where is that noted? What is the district's responsibility to a declined service?

- **Revoking consent means the parent is refusing all special education and related services for their child.**
- **All services and protections of IDEA end and the child is treated as a regular education student, when the parent revokes their consent.**
- **The revocation of consent should be in made in writing, with the parent's signature and date.**
- **Parents should understand fully what they are giving up, and the consequences that may be associated with revoking consent.**
- **When a parent revokes consent, special education and related services do not stop until the parent has received Prior Written Notice from the district.**
- **Parents who consent to the initial IEP are actually consenting to special education and related services throughout their child's school career.**
- **Parents can refuse to consent to services on the initial IEP, only. Future IEPs require consent only for change of placement, not for services, even over the objections of the parent.**
- **Parents who disagree with the services on their child's IEP can utilize dispute resolution options to try to resolve those issues.**

- **Once a child is removed from special education because the parent has revoked consent, restarting special education services would require an INITIAL evaluation, with all of the timelines that go along with that.**
- **If the parent refuses to consent to a change in placement, the district may seek to resolve the issue through mediation or due process.**

Revoking consent is for the whole enchilada. So, the only time you are revoking consent is when you are walking away from special education and you are saying, "I want no services of any kind. Don't touch my child. Have a nice day..." You are putting that in writing, you are signing it, and you are dating it. There is nothing on the IEP with a check box that allows you to do this. We do not think this is a good idea, so we are not making it easy. Is it an option? Absolutely. Can you exercise that option? Absolutely. You need to put it in writing and sign it, and when you do that, you will receive no services of any kind. That means no evaluation. That means no discipline. You are a regular ed. student and if your child does something silly and they get expelled for 180 days, they are out for 180 days. So, there is no home instruction during those 180 days, etc. All protections, all IDEA is off the table and your child is treated as a regular education student. If you are revoking consent, this is a huge step and parents want to think very carefully about taking that step. A lot of times IEP meetings are very emotional and parents get angry and parents get frustrated. Parents say things in the spur of the moment, in a heated moment and then think better of it after they sleep. To protect against that, we basically have said that parents can say, "I'm revoking consent," and stalk out of the room, or put that in writing and hand a piece of paper to the IEP Team or deliver it to the office, or whatever. We have said to districts and continue to say, you do not discontinue services at that point in time. You provide Prior Written Notice to the parent and in that PWN you are going to tell parents what they are giving up. "You are giving up the following things... This is the consequence of what you are doing. There will be no evaluation. There will be no IEP. There will be no safeguards. There will be no services. Your child will be in a regular education classroom, treated like all regular education children." And, I recommend, although not required by law, that in that PWN or in the cover letter, that there will be a date and a statement saying, "the district will cease all services on this date, unless we hear from you." That gives the parent time to really think about it. Some people, it takes them longer to calm down than others. And this will work for the ones with a short fuse that stay mad for a long time. This will give them at least a couple days to say, "Yes, this is really what I want," or "no, this is not what I want." If they don't hear from the parent, then all services are removed. Now, the parent changes their mind. My best guess is the parent is going to change their mind when the child is failing for however long the child has failed for. And, they are going to decide that with further thought, I do not want to do that. OSEP is aware of this and they do not want this happening. They do not want this to be a revolving door: I want out this week. This week, I want in. If you remove your child, it is an initial evaluation coming back in. That means all timelines kick in. That means 120 calendar days. A school year is 183 days, I think these days. You are almost in a whole school year to get back in. So, you want to really carefully think about this. Now, a lot of districts want to do the right thing. Most districts want to do the right thing. And they say, what if this child really needs service, and we don't want to spend 120 days to get them back in? That's fine, but the district still must conduct a complete initial evaluation, go through all of the hoops, do all of the paperwork, have all of the meetings. If they want to do this in less than 120 calendar days, that's fine, they can do that. Now the other part of the question, can I revoke consent for a specific service? Yes, although I wouldn't use the words "revoke

consent.” I would stay away from that. You are not agreeing to certain services on the IEP. You can’t stand the speech language path. You hate ‘em. They aren’t touching your kid. But, you like everybody else. You like the other services. So, you are not going to agree to speech language, but you are going to agree to everything else. That is fine. If it is an initial evaluation, the district will implement all but the speech services and they won’t do the speech services, and they can’t until you give them consent. Now, with this revocation thing it becomes much more important that a parent understand clearly what they are doing in that initial IEP, and the reason it has to be understood is the way we do paperwork in Ohio. That is basically it. When you do the initial IEP, you are signing consent for that IEP, but you are also consenting to all future special education and related services. You are saying to the district, “I am in this game and I want to play.” So, you are signing for that initial IEP and those services, but you are also giving permission to the district to provide your child with special education and related services until they graduate or age out, or you revoke consent. That is what you are doing in that moment in time. It hasn’t been clearly understood because of the way we do business in Ohio. Now it is more important to understand because now we are at the second IEP and that dreaded speech stuff is on there. The district has to provide a FAPE. You have given consent for special education and related services across the board. So now they can say, we are going to provide this service and it is going to be part of the child’s program, and you can take us through conflict resolution to address that. We can go to complaint, mediation, IEP facilitation, due process, administrative review, case conference. We can do all of those things. But the bottom line, it is on the IEP, because in consenting to that first one, you have given a blanket consent for special education and related services.

If there is a change of placement on the continuum of alternative placement options, under “change in placement” then without your consent, they cannot implement that IEP.

I advise districts not to rely on the checkbox (revoke consent) because that checkbox can be interpreted in a number of different ways. In Ohio, we allow parents to not consent to all services. So, that could be used in that format. It needs to be crystal clear and that checkbox is not crystal clear. If the parent is revoking consent for all special education and related services, that needs to be clearly written out. Some people have asked, “Can I write that sentence on the IEP?” Yes, but it needs to be a separate sentence, signed and dated. Don’t rely on the checkbox because then the parent could change their mind and say, “well that isn’t really what I meant. I was checking that box in a different format,” and you could. That box could be interpreted.

If the district is changing the placement of the child on the continuum of placement options (and the parent objects and refuses to provide consent), then yes, they have to go to due process, mediation, or whatever to place that child in that placement. The rest of the IEP would be implemented as written, except for those services that would be provided in the new placement, until such time as the decision about placement is made.