



Pondering more restrictive placement for unruly student: Does it constitute predetermination?

Imagine a student with a disability who constantly bursts out in song and pulls the hair of peers to get attention and avoid assignments. Now imagine his teacher has tried the IEP team's recommended interventions and he continues to perform to an unwilling audience.

The team may assume there is nothing else to try except a more restrictive educational setting. If school-based team members propose this to parents out of the blue, they could appear to be predetermining his placement.

"We always want to be mindful of not predetermining and avoiding the appearance of predetermination," said Pete Maher, an attorney at Shipman & Goodwin LLP in Hartford, Conn. "The law is very clear that that doesn't mean you can't do research, explore options, and prepare for a productive conversation. But the team has to come in with an open mind. In an ideal world, these types of discussions about whether a student is making progress or needs additional support should not be a surprise to parents. We stress the importance of ongoing communication and ongoing presentation of data to parents."

The IDEA requires districts to ensure that parents of a child with a disability participate in any group that makes decisions about the child's educational placement. [34 CFR 300.327](#) ; [34 CFR 300.501](#) (c)(1). To avoid the appearance of predetermination, IEP teams must not surprise parents with concerns about their students' behavior and any perceived need to change placement. They should promote ongoing communication and data-sharing. Teams should also show flexibility and transparency regarding placement options. Implement these practices to prevent predetermination when a student with significant behavior challenges seems to need a more restrictive placement.

Communicate often with parents about student's behaviors. Throughout the year, discuss a student's strengths and needs. Talk about what interventions are and are not working so that a conversation about a potential placement change is not surprising, Maher said. "Parents should understand that we will go back to an IEP meeting and discuss additional strategies or different settings that may be appropriate," he said. In other words, be upfront about the fact that nothing is set in stone.

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Share results of FBA. After conducting or reconducting a [functional behavioral assessment](#) and creating or tweaking a [behavioral intervention plan](#), share objective data with parents [in a user-friendly way](#), Maher said. Discuss your concerns, such as the impact of the student's behavior on his learning and that of others. "It could be a safety issue," he said. "There may be a disruption of the educational setting. The team should be prepared to discuss not just one aspect or one behavior. They really should be thinking of this through the lens of LRE analysis and helping parents understand that sometimes additional supports in different settings may be necessary."

Emphasize flexibility of setting. Ensure parents understand that although their child may currently need a more restrictive setting, this does not mean he will always need to be in that setting, Maher said. "We're always making educational decisions based on a student's present levels in the data at that point," he said. "You can communicate to parents that this may not be forever; it may just be what the student requires at this time. The LRE concept is always in effect. Hopefully with support and learning behavioral strategies and coping mechanisms, at some point we can travel back to a less restrictive setting."

Give parents view of setting options. Show a willingness to collaborate by offering to help parents visit multiple facilities the team will consider, Maher said. Seek a representative from each program who can answer their questions. "At the end of the day, the [district] needs to recommend and provide an appropriate program," he said. "Sometimes there is disagreement about what setting can implement that program, but by and large, with ongoing communication, collaboration, and partnership, there are many more successful than unsuccessful relationships with parents."

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