ACSA Every Child Counts Symposium
The Attorney Called: It’s Not All Bad News

Beth Nishida & Ric Silva
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Beth Nishida

Executive Director, Norwalk-La Mirada USD.

- Special Education Director - 18 years
- ACSA Special Education Administrator of the Year – 2009
- ACSA Region XIV Special Education Administrator of the Year - 2019
- Presenter at state and national conferences
- SELPA Director for the past five years
SPEAKER

Ric Silva

Founding Partner - ADAMS SILVA & McNALLY LLP

➢ Education law attorney for 20 years
➢ Started as a teacher
➢ Speaker and trainer at state and national education conferences
➢ Hispanic Business Magazine’s 100 Most Influential Hispanic Leaders of 2009
When the Attorney Calls ...
Traditionally, we use attorneys in special education when something is going wrong, and we are reacting to something that is already happening.

You probably talk to the attorney when –

- There is a complicated state complaint
- There is a due process filing – writing the response, attending resolutions
- Mediation – preparing for and attending mediations
- In other stressful legal situations – federal court; difficult
When the Attorney Calls …

- Overall ...
  - It is reactive
  - It can be expensive
  - It solves a particular problem
But What If it Wasn’t Just That Way?
Attorneys as Partners

• Special education uniquely complex and fraught with legal questions

• Overlap in special education and the law (how does this law or this legal case apply in this situation?)

• Special Education director may have legal knowledge, but ...

• Preventative law as cost containment opportunities
When the Attorney Calls …

- Proactive
- Reactive
• Consultative practice –
  • Consulting before the dispute arises
    • Assessment request comes as a demand letter
    • Assessment comes out of a mediation
    • The assessment is particularly complicated
Thinking About Attorneys Proactively…

• Consultative practice –
  
  • Consulting before the dispute arises
    
    • When assessments are in process –
      
      • Complicated – many assessors
    
    • Parents have given us a reason to think they will either file or ask for IEEs
Working Together Proactively

• Put cases on radar early –
  • Consult on cases that might be coming up
  • Ask questions early – waiting can mean that you miss an opportunity
    • What will a judge say...
    • How will a judge rule...
    • What do current cases say...
    • Do you think that case applies to us...
Working Together Proactively

• Preventive collaboration with attorney –

  • Training –Special Education Director and attorney together or just attorney
    • Analyze issues – what is your staff struggling with? manifestation determination, assessments.
    • Legal update – what do they need to know?
    • Particular focus – just school psych assessments, multi-disciplinary assessments with teams
Working Together Proactively

• Preventive collaboration with attorney –
  • Staffings – when the case is complicated
    • With special education director, program specialist, coordinator
    • Asking questions
    • Seeing from a “legal perspective” and a “program perspective”
Working Together Proactively

- Collaborative Decision-Making
  - How do we decide together whether to go to hearing?
    - Procedural
    - Substantive
    - Witnesses
    - Other Factors
Working Together Proactively

• Debriefing –

  • After high profile, mediation, or due process is over –

    • What did we learn? (Beth and Ric)
    • What did we do well?
    • What do we think the staff learned?
    • What training does staff need and who should do it?
    • What should we be doing differently or do differently next time?
Doesn’t bringing the attorney in to do training or attend staffings raise attorney fees?

Not necessarily

• If staff has current training, assessments/IEPs are more likely to be defensible.

• Staffing on a particular case, staff more likely to have defensible assessment

• Less filings will mean lower attorney fees
Thank You for Attending
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