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LANGUAGE ISSUES AND MEANINGFUL PARENTAL PARTICIPATION

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One aspect of the IDEA that is often overlooked is the requirement that parents be given a meaningful opportunity to participate in meetings that are required by the IDEA. Despite being often unnoticed, this obligation is, in reality, expansive. The IDEA requires that parents have an “opportunity...to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent evaluation of the child” (20 U.S.C. §1415(b)(1)). Thus, local educational agencies are required to establish procedures that ensure parental participation in virtually all aspects of the special education process.

This participation, however, becomes more complex when the native language of the parents involved in the process is something other than English. Initially, it is clear that the IDEA requires a district to provide procedural safeguards notice and the prior written notices required by 20 U.S.C. §1415(b)(3) (NOREPs) “in the native language of the parents, unless it clearly is not feasible to do so” 20 U.S.C. §1415(b)(4). There can be no argument, then, that these specific notices must be translated into the native language of the parents. For many, this is where the analysis ceases, as there are no additional requirements in the IDEA concerning the translation of any additional particular documents.

However, in order to fulfill the requirements of full “parental participation,” additional scrutiny is, in fact, necessary. Unlike the hard and fast translation rules discussed above, this inquiry necessitates looking into the parents’ ability to participate in meetings and discussions without translation. If the absence of a translator results in the parent being unable to meaningfully participate and contribute to the substance of the meeting and discussion, there may be potential liability for the district in question.

This was borne out in several hearing officer decisions that were rendered in the past year. In one of those cases, the parent was able to communicate at the meeting through the use of a translator. However, the key document being discussed at the meeting (a proposed IEP) was not translated into the parent’s native language at the time the meeting took place. As a result, the hearing officer ruled that the parent was kept from meaningfully participating in the meeting. Even though there was no explicit IDEA requirement to translate the IEP, the hearing officer awarded compensatory education for the violation.

Districts are thus urged to carefully investigate whether parents with a native tongue other than English are being allowed the opportunity to meaningfully participate in the entire special education process of their son or daughter.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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