

Rough Transcript
Trust Your Gut - When to Ask for Legal Advice with Grace Kim
July 13, 2021

00:00:04 Hey everybody, welcome back to Partners and Promise with the Trust Your Gut series. We are on today with our founder Grace Kim, and Grace comes to us with amazing expertise not just in her personal backstory because she also is a mother of an exceptional student, but she is a special education attorney. She is here today to talk to us about how you can identify when you might need to call upon the experts - special education attorneys and advocates. So Grace, in this series we're kind of looking to give parents those tools to know when something might be going wrong in their gut and they can identify when they need to ask for help from a professional. For your expertise, I would love to know what you recommend as far as when should a parent in an IEP meeting possibly recognize that something is going a little bit wrong or that they're in a little bit over their heads and they need to call for some extra help? What would you recommend?

00:01:06 Sure. Well, under the Individuals with Disabilities Education Act (IDEA), a parent can bring whomever they choose to an IEP meeting. It's always a good idea to bring someone else who may have a relationship with your child, whether it's even a relative or friendly neighbor, or a special education advocate or an attorney, just so you have that outsider view. When a parent is sitting in the meeting, even if that parent is a special education attorney or even a special educator or a psychologist - which many of my clients are, and some of my clients are even school administrators such as principals and assistant principals - we're still mom and dad when we're sitting in that meeting. It's difficult for us to kind of take that higher level vantage point on the situation. So first, I would encourage at least once to bring someone else to the IEP meeting with you. That is your right under the law and you should exercise that.

If at any point you feel that something might not be right with your child's education - they're falling behind, you see a change in their demeanor and their attitude, they start showing psychosomatic symptoms, complaining about stomach aches or headaches whenever it's time to get on that school bus - I would ask the IEP team firstly what the student's progress is to that point. Ask them what is the baseline of the student's performance, whether it's academic or functional on any particular goal, or just in general in any given subject. Have them show you the data and explain how that lines up with where the student should be academically given their cognitive abilities, given their disabilities.

00:02:45 If they're unable to produce data and instead give you generalized statements of "Susie's doing great, she's such a pleasure to have in class" or "Susie's making great progress" but no data or evidence that Susie has actually learned anything, that's a red flag. Another huge red flag for me is whenever - and I'm even in IEP meetings that I've attended as an attorney - the school would just kind of sit around and tell the parent what they're going to do without really a discussion and say, "Well, thanks for coming."

00:03:18 An IEP team meeting should have an agenda, and that agenda should include introducing all of the IEP team members, explaining the purpose of that IEP meeting - whether it's an annual IEP or an addendum or an amendment meeting, or a meeting called at the parent's request or even the school's request. Whatever the purpose is, it should be laid out specifically. The IEP team should already be in the mindset of telling the parent, "Hey, here are

Rough Transcript
Trust Your Gut - When to Ask for Legal Advice with Grace Kim
July 13, 2021

your rights. Here are the procedural safeguards that exist in special education." They can actually explain it to you, or they can just hand you the booklet. If it's just handing you the booklet, that's great - read it.

Then there should be a discussion of the student's current educational level of performance while taking into consideration that child's circumstances and special factors, and really talking about using data, talking about where the child is performing and where they should be performing. If those two things measure up, great. But many times what you'll get instead is the school will just tell you everything is great, please sign this document. But there needs to be a robust discussion where the baseline data is examined, the current level of progress is looked at closely with actual work samples and data points.

00:05:03 If a team comes together and no one seems to know how the child is doing, I mean an option that you have is really as a parent to say, "You know what, it seems like no one is really ready to discuss how Susie is doing. Why don't we reconvene and then you can present data to me to show me that you're teaching Susie what you're supposed to be teaching Susie." I mean, there are nicer ways to say that, but generally the idea is the IEP team - all those individuals, the special educators, the general educators, the speech language pathologists, the occupational therapists, and everyone - should come to the meeting prepared and ready to discuss the student's level of functioning both baseline (where they were when the school year, the IEP was first implemented) and where they are now.

00:05:36 Yeah, and this is really important for families to remember because we are used to following orders in the military, but this is the protection, right? That is a legal protection afforded to you. You're not just being - I mean, being a squeaky wheel, you're just asking for what is legally afforded to you as a special education family, right? I mean, so this is not something that parents should be afraid to speak up about.

00:06:06 So this is what's in the law. This is what the IDEA says. But just know that you have every right to stand up and be your child's best advocate. You have these protections available to you whether you know about them or not - they're there, and the schools have to respond. Absolutely, and I mean that's not even - that's just the preamble to everything I just stated. Now that's the preamble to actually then taking a look at the IEP goals, accommodations, services, and placement.

00:06:36 After that discussion - everything I've already said - then we have to take a look at the student's areas of need that have either come out of these discussions or that are generally already identified and known through the objective testing that's already occurred, as well as school performance and baseline data that we talked about. A lot of times that's the beginning-of-year assessment, mid-year assessment, end-of-year assessment that many schools do now.

When you're talking about IEP goals, they have to address every single area of the student's needs. This does not mean that the parent needs to show up with their advocate and have an IEP written - not at all. Our job is simply to identify those areas of need and then ask the IEP

Rough Transcript
Trust Your Gut - When to Ask for Legal Advice with Grace Kim
July 13, 2021

team, "How will you then address these areas of need?" And that leads into the discussion of what goals are required, what services, what accommodations, and then ultimately what placement.

00:07:36 If there are any state assessments, those state assessments have to be discussed as well during the annual IEP meeting, as well as diploma options - whether the child is on track for a standard diploma or some type of modified diploma that exists in certain states. Actually, I believe the majority of states have - in the Commonwealth of Virginia it's called the Applied Studies Diploma. In other states it might be called the Modified Diploma. There's also - you need to talk about the least restrictive environment when you're determining a student's placement. That has to happen every year.

00:08:07 And that means not just saying the kid's doing fine in our school. No, no, no. We have to significantly consider the environment. What is the least restrictive environment in which the student can receive a free and appropriate public education? Not what is the least restrictive environment where the student can quietly sit at a desk - that's not the same thing. So we really have to talk about access to education and how the environment, whether it's general education, special education, public school, private school, how that would impact the student's ability to access an education.

00:08:37 Special education related services I touched on earlier - every IEP goal should have a service attached to it. And then of course, the discussion of parental consent and the fact that partial consent is available, meaning if a parent only agrees with certain areas of need or goals - well what I'm talking about is the changes that have been made during the IEP meeting to those areas of need, IEP goals and services - and they disagree with others, or they disagree with changes to the service hours, for instance. Many times IEP teams tend to try to limit the number of hours. If you disagree with that change, you don't have to sign in full agreement to the IEP. You can sign in partial agreement only as to - and you delineate what you agree to, and then you delineate what you disagree to.

00:09:43 Is that available in all states, or is that, you know - so that's a concern of families if there's some areas that are minimum requirements because of IDEA, and then there's state law that can add in more provisions and protections for family members. Is that one of those that's afforded in all states, or as far as having the partial consent?

It's generally - well, here's the thing: under the federal law it doesn't specify. It talks about stay-put IEPs, the state provision that in a situation where there is a disagreement, the last agreed-upon IEP will become what's known as stay-put. In some states, parental consent is not required for subsequent IEPs after the initial IEP, and in that situation many times parents are forced to consider filing for due process.

00:10:18 But when we're talking about a partial consent IEP, the importance of stating the parent's partial consent even in those states where parental consent is not required, it's so that there is a clear delineation of what it is that the parent is agreeing to as appropriate and what they are disagreeing to as inappropriate with regard to the child's educational progress.

Rough Transcript
Trust Your Gut - When to Ask for Legal Advice with Grace Kim
July 13, 2021

00:10:52 And it sounds like that's an area too where a parent could articulate why they disagree and provide their data to back that up. So if we originally agreed on X number of hours and now there's a change and I disagree with this time, we saw that because of the additional hours over here, we had these positive results. You can itemize just, you know, to give yourself that extra bit of information, it sounds like, to then move forward.

As far as parents knowing when to kind of raise their hands and ask for extra help, is there any - I outlined how red flags would be a lack of data, platitudes instead of data - is there any other red flag areas for parents who maybe are just in an IEP meeting with their new neighbor that they just met? We military families - who's your emergency contact when you move to a new location? So perhaps they have someone, perhaps they don't. What is another indicator, or as we're kind of summarizing, something that they can keep in mind that they might need to elevate this process and to include someone who's a working professional in that area, whether special education attorney or advocate?

00:11:56 Well, any type of predetermined sort of sense that you get, meaning that you're coming to a meeting and rather than having a true discussion looking at the evidence - looking at the trial, and I say evidence because I'm an attorney - looking at the data (that's exactly what evidence is, it's data), looking at the data to determine whether or not the student is making the progress that's being reported through the platitudes, etc. When you're coming to a meeting and rather than truly looking at the data, they're just kind of saying, "We've already discussed before you got here, mom and dad, and we've determined" or "we've decided" or "this is what we're going to do" without really talking it through.

00:13:00 Whenever you feel like a decision has been made apart from your participation, then that is the largest red flag. Parental participation is a procedural requirement under the IDEA. It can have significant substantive impact. So let's say you're in a state where parental consent is not required for any subsequent IEPs after the initial IEP. Well, if a parent is not able to participate in that meeting, then they have just violated the IDEA procedural requirements and most likely also substantively the student's access to a free and appropriate public education, because without the parent's input, the IEP team cannot say that they've actually had an IEP team meeting. The parent is the number one, first listed member of an IEP team under the law.

00:13:35 And so that is the ultimate red flag. Predetermination is not allowed. Does it happen constantly? Even if they try to cover up a predetermination decision and you can kind of sense it where you're sitting in the meeting, you're presenting the data, and it seems like they're not acknowledging the data - almost like they're doing kind of like a Jedi mind trick saying "This is not the data you seek" even though you're saying "Here it is, here it is." It's not me, it's your data sometimes from the school, or it's the data from this expert stating that here is an area of need or here is a regression that this child has experienced in this particular skill. And rather than acknowledging that, the school kind of says, "Well, thank you for sharing, thank you for this input. We're going to do this anyway." And that's a huge red flag because that shows that they have already predetermined an outcome. They've kind of gone through the motions allowing

Rough Transcript
Trust Your Gut - When to Ask for Legal Advice with Grace Kim
July 13, 2021

you to talk, allowing the expert to talk, looking at the document, but the outcome does not line up with the data that you signed. That's predetermination.

00:14:37 Another sign of predetermination is a statement such as, "Well, this is what we do in this program. This is what we do for kids with dyslexia. This is just what we do." Because then what they're doing is they're writing an IEP to their program, to a particular classroom, rather than for that individual student. Because remember, it's an Individualized Education Program. It's based on the student and no one else.

00:15:13 Another red flag that I see - and I have a very unique perspective on this because I represent multiple students in several school districts here in the Commonwealth of Virginia - and I'll note that within a school district, one psychological report for a student on the autism spectrum with comorbidities of ADHD and communication and speech language, that student's evaluation may be identical to another student's evaluation. And sometimes they forget to change the names. That is a red flag. If I see that, sure, is mom and dad gonna know? Probably not.

00:15:45 So in that situation, if you're looking at a document and it does not have your child's name on it, if it has someone else's name altogether, if instead of calling your son Joshua, it keeps referring to him as a she, I would state that most likely that report, that IEP was simply cut and pasted from someone else's. In which case, chances are that it's not going to be a true reflection of what your child is doing, but rather kind of a general "Here's a template that we use for everybody. Just change the names and make sure you switch out the pronouns." Yeah, that's a huge red flag. So parents, please be on guard. Yeah, cut and paste can really be a good indicator of when it is not a thought-out process. That is a really great tip as well.

00:17:00 So thank you Grace for joining us and for sharing all your insights into this process. And be aware that we're going to keep continuing our conversation with Grace and she's going to offer so many more tips and tricks in the coming months and hopefully years to come. Thanks Grace!

You're welcome. Thank you.