



## **ATTORNEYS AND ADVOCATES AT IEP MEETINGS & INTERACTING WITH SCHOOL STAFF**

Guidelines and Procedures for Parents and Staff

Notice: The School District Attorneys in Special Education Matters are  
Campbell Shatley PLLC

**NOTE:** If you are acting as an advocate for a child and/or their parent(s) and you are not sure if you are "employed by, acting as the agent of, or otherwise supervised by an attorney representing the student and/or the parents (whether paid or unpaid by the parents or the attorney)" pursuant to the North Carolina Rules of Professional Conduct, you should contact the attorney for clarification.

### **I. Purpose:**

Henderson County Public Schools believe that collaboration between school district staff and parents is essential to serving every student. These guidelines are intended to facilitate productive communication between the district and parents or legal guardians (collectively "parents") regarding the participation of attorneys and advocates acting as attorney agents at IEP meetings. Attorneys and their "agents" are subject to the North Carolina Rules of Professional Conduct, and thus, clarifying these issues in advance benefits attorneys representing parents, as well. Both attorneys and attorney agents are held to the standard of truthful communications with all persons, regardless of whether those persons are represented by an attorney.

It is the intent of the school district that this cooperation will also assist both the district and the parents as they prepare for IEP meetings, minimize the risk of any meeting needing to be rescheduled, foster continued collaboration and cooperation between district staff and the parents, and help create an environment that promotes decision-making that is student-focused.

### **II. Attorney Attendance at IEP Meetings:**

Both the school district, as well as a parent or legal guardian of a student with special needs, may elect to bring an attorney with them to an IEP meeting. However, the Office of Special Education Programs (OSEP) "strongly discourages" the practice of bringing an attorney or legal advocate on the rationale that the presence of such individuals increases the risk that the relationship between the district and the parents turns less collaborative and more adversarial, and can hinder the ability of the team to make decisions in the best interest of the child. *See Letter to Serwecki*, 44 IDELR 8 (OSEP 2005); *see also Letter to Clinton*, 37 IDELR 70 (OSEP July 2001); *Letter to Garvin*, 30 IDELR 541 (OSEP 1998).

In an effort to foster this collaboration between staff and parents, the school district will bring an attorney to an IEP meeting only in unique circumstances that may include a) a lawyer or an



attorney agent (as described in Section III below) plans to attend or the parent states that they are "unsure" if the representative will attend; b) the parent has filed an active formal complaint or legal proceeding against the school district; and/or c) the parent is an attorney. The school district will provide as much advance notice as possible under the circumstances and will generally honor parent requests to reschedule a meeting to allow an attorney to attend on their behalf.

### **III. Parent Representation at IEP Meetings/Procedures:**

The school district respects all parents' right to have attorneys and/or advocates at IEP meetings as they deem in the best interest of their family and their child. The district also recognizes that, from time to time, a parent may choose to invite an attorney or an advocate associated with an attorney to attend an IEP meeting. These guidelines are intended to help to facilitate this process.

- A. In advance of every IEP meeting, parents are strongly encouraged to inform the school district that 1) an attorney or 2) any other individual acting as an "advocate" under IDEA who is employed by, acting as the agent of, or otherwise supervised by an attorney representing the student and/or the parents, regardless of whether they are paid or unpaid by the parents or the attorney (collectively referred to herein as an "attorney agent") plans to attend the IEP meeting.
- B. To facilitate this disclosure, school district staff who schedule the IEP meeting should ask parents if they intend to bring an attorney or attorney agent. This request may be repeated on the Invitation to Conference, as well. Again, if the parent and/or advocate are unsure if the advocate is an "agent" of an attorney, the parent and advocate will be instructed to call the attorney to request written confirmation for the school district from the attorney's office.
- C. As part of this request, school district staff will notify parents that if the parents elect to bring an attorney, the school district will also bring an attorney to the meeting.
- D. Staff will also notify parents that if they intend to bring an attorney agent this may prompt the school district to have legal counsel attend the meeting. If the district chooses to invite an attorney to the meeting, parents or their counsel/advocate will be notified in advance of the meeting that legal counsel for the Board will be in attendance.
- E. At the beginning of each IEP meeting, any representative accompanying the parent may be asked to clarify if they are 1) an attorney representing the student and/or parent(s) or 2) employed by, acting as the agent of, or otherwise supervised by an attorney representing the student and/or their parents, regardless of whether they are paid or unpaid by the parents or the attorney. If the answer to either



question is "yes," and the school district did not have prior notice of the person's attendance, the meeting is subject to be rescheduled until such time as the school district may have legal counsel present for the meeting.

#### IV. Attorney and Attorney Agent Interactions with School Staff

The school district is a represented party in special education matters. Therefore, attorney and attorney advocates may not communicate directly with school district staff outside of an IEP meeting and school district staff will refer any requests from a parent's attorney or an attorney agent to the school board counsel's office.