



IEP Strategies

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Effective IEP Strategies

Ernest: [0:08] OK everyone, I want to say welcome to the third conference call we have had so far, for those of you that I have been with for the past two, three days. Our first day was wonderful with Chantal where she talked about Autism 101: The basics. The second day was of course with Dr. Lang who talked about autism therapies. And today, we are absolutely fortunate to have a gentleman by the name of Mark Woodsmall. He is an attorney who specializes in special education and representation in front of the regional center.

[0:44] So many of you who are on the call today have probably had your day in the sun with the regional center, maybe you have had some issues with the school. Well this gentleman here is completely familiar with this issue.

[0:56] He practices law exclusively in this area, which is special education law and he also happens to have a number of positive things about him, one of them is that he has a child that is on the spectrum so he knows what is involved dealing with the school system, he knows what's involved in dealing with all aspects of this, and he happens to also be on the UCLA Center for Autism Research and Treatment, community advisory committee.

[1:27] So he definitely has a lot of experience in this area. He is a champion for the rights of children that he represents and we are just so fortunate to have him here today. I happened to hear him speak at a conference here recently and he just really wowed the crowd with his presentation. He is going to be with us today and I just want to introduce him. Mark, thanks a lot for coming. We are just glad to have you here today.

Mark: [1:59] Thank you for that and also thank you for putting together such an innovative message for our community to come together and exchange information. Before I get started, I have to sort of give you the traditional legal disclaimer which is...

Ernest: [2:16] OK good.

Mark: [2:17] I guess what better way to start a legal talk with some legal disclaimers.

Ernest: [2:23] Sure.

Mark: [2:24] I need the participants in the call tonight to consider this talk to be a discussion among friends. The primary reason for that is unlike some of the other professions that have sort of a national recognition in the US, as its licensed attorneys we are only authorized to practice in the state where we have our license. Even though I do in fact have federal licensure, I am a licensed California state attorney.

[2:54] So the information that I am about to share with you is informational, although it is not intended to be legal advice and certainly if I provide information for you tonight, I would want you to certainly verify it with your local attorneys in your communities.

Ernest: [3:14] That's great that you mention that. As a matter of fact, we had one person that just asked if you have a website.

Mark: [3:21] We do. The firm exists at WoodsmallLawGroup.com. And as you mentioned in your introduction, we work exclusively in the area of representation of children with disabilities in their school systems in California with office we have called the regional center. I know that many of you throughout the country don't have that or if you do, you have it under another name.

[3:56] So the California attendees on the conference, you will know what I am talking about. For many of you others, you have various state agencies that started work to augment what school district does by community based services and support. A little bit about that...

Ernest: [4:12] Could you sort of explain what the regional center is for people who might not understand what that is?

Mark: [4:19] Well sure. Some of the states have agencies that exist, in our case the state agency that handles the services for individuals with developmental delays and disabilities and in California, the regional center system provides services under two different models, one is early start services for the zero to three children. And these are kids that are either demonstrating, for purposes of our call, early onset autism or they are demonstrating a risk of developing a developmental delay. And then ultimately through after age three, the regional center provides supportive services for the families at home and this would include behavioral support and respite support for the parents to get a break as well as certain community access support.

[5:21] After age 18 or 21 which ever occurs first for our kids, the regional center then provides supportive services for adults with disabilities in the institutes of California, there are other categories with primary [indecipherable] will be autism. And I think it is really important if you are a new parent, just confronting autism in your life for the first time, it is important that you familiarize yourself with the local resources.

[5:56] One of the projects that I have been affiliated with in addition to my professional work with Autism Speaks and I know that Autism Speaks has been working really hard around the country to get universal location for regional resources. So if you happen to be in a region that you don't have a whole lot of folks to talk with about how to effectively track down information, I know that there are supports and services available where you can find localized information.

[6:27] My wife and I both have been working actively with Autism Speaks almost since early days of our son's diagnosis. I don't if you mentioned that Ernest or not, but I also have a little boy on the spectrum, his name is Andrew, he is eight years old.

Ernest: [6:42] Yes, I remember.

Mark: [6:44] So basically, in addition to the community work, I also teach law over at

USC Law, University of Southern California and I teach in the area of special education. The nice thing I think about our law and the reason I think this federal legal construct works for a call like this is because even though we do have various states interpreting the law differently, it is a federal law which means that no matter what state you are in or even in many of the [indecipherable] and other areas, you are entitled to federal protections of the law, which means that the topics that I am going to discuss today apply to all of us across the country.

[7:32] Now anytime you have a federal law, the states at a minimum must enforce that. Of course they can go a little further and create state specific laws and that's what I was referring to when I am giving basic pieces of information here, it is always important for you to validate and verify with your local lawyers.

[7:50] So I think without further ado here, let's go ahead and jump in to basics of understanding when an IEP must be needed and how to get one established for your child. Under the federal law, there are 14 areas of eligibility for IDEA or the Individuals with Disability and Education Act. And I think the important thing for you to think of as we go down the list is that there are various ways that your child can be found eligible.

[8:29] Many of our kids have motor delays or sensory challenges. Many of our kids clearly have speech issues, behavior challenges. Some of our kids have conditions that exist simultaneously with autism, obsessive compulsive challenges, separation anxiety and things that. And it maybe true that maybe one basis of eligibility might be the most significant concern, but as families I need you understand that IDEA is a very specific law, in that once eligibility category is determined, I'd like you to think of it like 14 keys to the same door.

[9:12] And once you take your key of eligibility and you open that door and step inside, even if your child is eligible, let's say, under speech and language challenges for an IEP, they still have to provide, meaning the school district has to provide behavior support from services, they have to provide OT services, if that's what's needed.

[9:31] So you have to think of, and many parents, I think, get hung up on the notion of, maybe if your child's rather young in the process and you don't have a definitive diagnostic of autism, but you have verified that your child's eligible for speech and language, the key is that's a key to your door. You can open it and step inside and get any supports and services your child requires.

Ernest: [9:53] Right.

Mark: [9:55] Going to the next step, it was interesting. One of the early submissions on a question to Jessica--I think it was a grandmother who had written that she wasn't aware that parents could write the IEP. [laughs] And she's absolutely correct.

[10:10] The title of this workshop was slightly misleading. Parents, per se, don't write an IEP. School districts write the IEP. What we're interested in here is how do you access this process, and how you participate in it such that you can make sure that what's

ultimately established is reflective of your child's unique needs.

Ernest: [10:31] OK. That's key.

Mark: [10:33] Yeah, it is key, because I think if you're looking at it, you're thinking, "Gosh. That's something I need to write up." Not exactly. But it's important that you understand your role.

[10:45] And what the federal law says about parent participation is that, really, parents are to be deemed equal members of the IEP team, which means -- and this often happens here in California, and I'm sure, from my information from families around the country, I've heard something similar. Parents sometimes feel like they come into the process, and the school district, often, they're professionals and the level of expertise that's at the table often leaves the parent feeling like they're sort of ill-prepared to discuss the child.

[11:20] And I think it's really important that you understand, number one, that Congress intended that parents would be equal, which means that, by the very nature of the fact that you're at the meeting, your voice has to be given equal weight with the rest of the team.

[11:34] The other thing I think that's really important--and a lot of parents, we don't give ourselves enough credit--and that is that, although the school district may have conducted various assessments by professionals, ultimately, if you're the expert in the child, you know how your child's challenges manifest; you know a tremendous amount about your child's health concerns, about the history, about the child's requisite strengths.

[12:02] And so, if there's one thing I think that, as parents, you walk away from this talk today with, I think it's the understanding that if, at any time in an IEP meeting, anyone ever tries to make you feel as if your opinion is not as important as those other opinions being shared, I think that the simple question you need to ask is: "Isn't it true that the law acknowledges parent participation, not only as vital, but ultimately that I'm an equal member of the team." And I think that generally addresses the challenge that parents are up against.

[12:40] OK.

Ernest: [12:42] That's thoughtful. Go ahead.

Mark: [12:47] No. What I was thinking to do is to sort of get into the essential pieces of the process.

Ernest: [12:56] OK.

Mark: [12:58] And then, once I've covered those, Ernest, if you wouldn't mind, I think what we could do is then we could go into specific questions from folks who've written in and folks who might have other questions.

Ernest: [13:08] Great. I like that. Let's do that.

Mark: [13:11] OK. So, I think it's important that we acknowledge that there are different ways to look at an IEP. For the parents, clearly, we're in it because we need to make sure that our child is going to receive an appropriate education. School district professionals, I believe they're in the process because, at least initially -- and I believe, frankly, that there's always good in an educator -- is that they picked this field because they picked the kids. They believe in the children.

[13:46] And so the strange thing is everyone seems there for the right reasons, and yet sometimes we can't feel as if we're getting the help we need. And I think what that's largely based on is this notion of, frankly, it's a requirement of the states to provide an appropriate education for our kids with disabilities, but the federal government really hasn't stepped up to fund the process.

[14:09] And so, although it's often not allowed to say that "We can't do this for your child because it's too expensive or we don't have the resources in the district, " many times what happens is the team is sort of operating from the idea of, "Well, these are the services we can provide." And I think the parents come in with notion of, "These are the services that my child needs."

[14:31] And that different perspective is fine, but it sort of bypasses the entire process of the IEP. And I think if I can help you to understand how the process works, you can understand how you can get the services and supports that you ultimately are going to need for your child.

[14:49] So, the first part of any IEP consideration is the assessment. What the law says about assessments is that the district has a duty to assess the child in all areas of known or suspected disability, which means they can't simply limit their evaluation to one area of your child's need. They have to look at the global child, which means how your child learns; how your child processes speech and language issues; motor, whether it be fine or gross motor challenges or issues; behavior, of course.

[15:29] And then, for a lot of our kids, perhaps, maybe they're exhibiting autism in the form of Asperger's, maybe they're advancing year to year in their academics, but we have more subtle challenges and needs, like, for instance, challenges of social reciprocity and pragmatics and that kind of thing.

Ernest: [15:47] Right.

Mark: [15:48] And so it's key that the parents are vigilant in the assessment-planning process.

[15:53] So, what does the law say about assessment and assessment plans? Well, when you refer your child for an IEP, or for consideration of an IEP, the district has a duty to issue an assessment plan. What the law says about that is that you generally have 15 days to review it and make sure that it's assessing your child in all areas of need, and if you feel that other areas of need are indicated, it's up to the parents, as an equal participant in the process, to indicate to the district that they would like further areas of assessment to

be considered.

[16:28] Similarly, sometimes districts are attempting to assess in areas parents feel they necessarily don't want to have a child assessed. So, for instance, a lot of times, especially with our young one, we're not really ready to have the child assessed for intelligence quotient or cognitive capacity, especially when you consider that many of the test instruments rely heavy on verbal-language skills. So you could actually limit things like IQ testing, while at the same time ensuring that your child gets testing in all areas of known or suspected disability.

[17:06] Once those assessments are complete, typically, an IEP meeting is held within 60 days -- or a period shorter, as devised by your state. And the purpose of the meeting is to consider those assessments and to draft an IEP document.

[17:27] What I tell parents getting ready to go to an IEP for the first time, I consider the notion that you always want to have the opportunity to review the district's assessments ahead of any IEP. The law is not all that precise on this point. All it really says is that parents are entitled to review them in advance. And what I often like to suggest to parents is, when you receive your assessment plan, that next year's signature, you indicate that you would like to receive any draft documents or assessments at least five business days ahead of an IEP.

[18:03] Go ahead.

Ernest: [18:04] I'm sorry to interrupt. So, typically, when have people been receiving their documents?

Mark: [18:14] Well, it's not uncommon, at least here in Los Angeles and surrounding communities, to have the parents show up at the IEP and, for the very first time, that's when they're receiving the team's review or assessment on their child.

Ernest: [18:30] OK.

Mark: [18:31] And the obvious problem there is you need the time, I think, to consider what those documents are calling for, right?

Ernest: [18:39] Right.

Mark: [18:40] And at the same time that you have private providers or other people who've been working with your child. This would be an ideal opportunity for you to share those assessments with those folks and to get their opinions.

Ernest: [18:49] Right.

Mark: [18:53] And certainly, on that point, if you're spending family resources to hire a private provider to do work for your child related to his or her autism, it makes logical sense that those providers are also providing reports that you can use for the IEP team.

Ernest: [19:13] Ahh, OK.

Mark: [19:15] The law says that districts actually have to consider the outside assessment. They don't necessarily have to follow them. But they have consider them. And they have to document that they considered them.

[19:26] And this is all based on the notion of every member of the team is an equal participant. So if the parent is coming in, and you're presenting your documents from the outside assessors and the school district ultimately says, "Well, those are great. But we have done our own assessments. And so we really don't have the time to consider those, or so forth." You have to understand that's a violation of your child's rights.

[19:49] What I recommend in order to avoid these kinds of issues is in the same notion that you're asking the district to provide it's draft assessments five business days in advance, you should also give the courtesy to the school district of affording them your private assessments in advance.

Ernest: [20:07] OK.

Mark: [20:08] So one might ask, "Does that make sense?" I mean I think we can approach the process from a philosophical point of: We want the school district to have the information about your child if it's available. And so sometimes holding back information doesn't really help the child. It certainly won't the team to understand.

[20:28] And especially if you're going to be basing a request for private services or extensive services on that feedback of the private experts, you want to make sure that the school district has an opportunity to review them.

[20:43] You know, from a parent's perspective, you may say, "OK. Well, I have my own ideas about the child." I think you have to prepare yourself for a notion of an IEP meeting is an extremely stressful environment for parents, and I think even where you have a lot of collaboration with your school district. And I think the reason it's so hard is because we carry the weight of our child's future on our shoulders.

[21:12] So you have to give yourself as many advantages as you can for dealing with this highly technical meeting. What I really recommend is when you're going forward into the meeting, that you take the opportunity to write down your notes and observations regarding your child's successes, challenges, weaknesses, and so forth. And have them written out in advance.

[21:39] The reason I want you to do that is if you've taken the time to really think about your child's needs in advance, write them down, it guarantees that when you're sitting down in the stress of the IEP meeting, that you don't get flustered and lose track of the things you came there to discuss.

Ernest: [21:55] Right. That's a great takeaway.

Mark: [22:00] I hope so, because I really do believe that if the team is there for the right reasons and if they truly are affording the parents the chance to be part of the process and equal, then you really do need to be prepared and demonstrate to the district that you're not there as some sort of parent in stress or parent in grief or some of the things that I think that stereotypically is often thought about parents dealing with disabilities.

[22:30] Quite frankly, I think many parents (myself included) who are dealing with an IEP, when we're at the IEP meeting we're there for business. We're there to make sure that our child gets the help that they need. When we grieve or when we deal with these issues, we deal with those at a place of worship or with our friends or family. So in order to preserve that parent as equal, it's really important that you govern yourself at all times in a professional way.

Ernest: [22:56] Sure.

Mark: [22:58] So let's say... Go ahead, Ernest. Go ahead, sir.

Ernest: [23:01] No. You go ahead.

Mark: [23:04] OK. So let's say for a moment that this isn't your first IEP, that you've been at this for a while. But you're getting ready to go into a new IEP. And you want to take a new perspective on things. Maybe try to figure out where exactly your child is right now.

[23:19] Well, what I recommend you do is make sure to request a copy of your child's educational record. The Federal law on this point is called the FERPA. And many of you may have heard of the Federal statute called the HIPPA, which is the health privacy statute. Well, the FERPA statute is a Federal privacy statute dealing with education rights.

Ernest: [23:41] What does it stand for?

Mark: [23:43] The acronym is F-E-R-P-A.

Ernest: [23:47] OK.

Mark: [23:48] And I believe the acronym stands for the Family Education Rights and Privacy Act.

Ernest: [23:53] OK.

Mark: [23:53] And what it's basically there for is to make sure, number one, that everything in your child's file is protected and private from disclosure to outside sources. But I think more than that, it actually affords parents an access mechanism for you to find out what's actually in your child's file.

[24:14] The way that you trigger the rights under Federal law is basically a written request to the school district. It says, "I would like a copy of my child's educational file so

that I can review it and to participate more fully in the IEP meeting." In California, we have a rule that says that we can have a copy of our child's educational file within five business days of request. And I know that various states have different rules.

[24:43] But it's important for you to remember that under the Federal law, within 45 days of request, you can get a copy of virtually anything in your child's file that's identifiable to your child, usually by name or some other designation.

[24:58] The reason I want you to have that is it's important for you to know what your educators have written about your child: everything from progress reports to therapy notes to progress on the goals and objectives. OK?

Ernest: [25:14] OK.

Mark: [25:15] So let's talk for a minute about evaluation. Let's say that your child had an evaluation conducted by the school district. And you're of the opinion that that evaluation doesn't really reflect what you know to be true about your child.

[25:36] The law actually has a protection for families when this situation occurs. And it's called the Independent Educational Evaluation Legislation or the IEE. And the beauty of the independent assessment is that oftentimes, with our kids... I don't know about you guys out there, but my little one can tend to be expensive when you start to look at all the different experts that have to be consulted. And those assessments are not inexpensive.

[26:08] Basically, what the law says that anytime a parent disagrees with an assessment conducted by the school district, you have the right to request an independent assessment. Now the key to the law is that not that you simply have the right to request it, you actually have the right to request it at the cost of the district.

[26:26] So what this allows you to do is to get a second opinion from a quality source in situations of disagreement. Now you may say, "OK. Well, I've disagreed in the past with my school district. And they say, well, please explain why you're disagreeing." The law's pretty clear on that point. Actually, you don't have to tell the district why you disagree, only that you do.

[26:50] And the law is very specific on that point: Only you have to state, "I disagree." Once you've stated that, the school district has two things it can do. One is it can provide an independent assessment at their expense. And when we say independent, we mean selecting truly an impartial assessor, not someone who has a contract with the district exclusively, or not someone selected by the district, but rather selected by the family.

Ernest: [27:17] OK.

Mark: [27:18] The other option the school district has is simply where the family requests an independent assessment and the district says, "Well, we don't agree. We think our assessment is legally valid." Then the district has the duty to file due process or to file against the family to prove that its assessment is accurate.

[27:39] Now any family, I think, when they hear this, they say, "Well, you know I certainly need to secure help for my child. But I don't want to be in a situation where the school district's filing due process." And I would tell you that more often than not, where the school district hasn't maybe done the best of job with assessments, I think they're pretty savvy about knowing that. And they won't always fight that issue.

[28:02] The other thing, though, is that if they do really dig in and say, "I'm going to fight this issue with the family." Just know all you have to do is withdraw your request for the independent. And the moment that that occurs, the school district no longer has a basis for its case. So it can't maintain a due process action against the family if there's no real issue of dispute.

Ernest: [28:23] OK. Give me that that one more time.

Mark: [28:28] [laughs] This would be a good opportunity for me to give you some reading on this.

Ernest: [28:42] OK.

Mark: [28:43] There is a Supreme Court decision that came out in, I believe it's 2005, right around the end of the year. And the title of the case was "Schaffer versus Weast." If you go to our website, under the parent resources section, we do have the Schaffer case posted.

Ernest: [29:01] Could you repeat that website again?

Mark: [29:03] Yes. WoodsmallLawGroup.com.

Ernest: [29:06] OK.

Mark: [29:08] And the Schaffer case is really helpful because a lot of people know the Schaffer decision as the one that shifted the burden of proof to the parents to prove that the school district wasn't providing the appropriate education. And while that's true in, I believe, just about all the states, with the exception of New York, the opinion is rather helpful for parents in terms of understanding, first off, this independent-assessment right that I've talked about, but also the right of parents to be involved in the process and the procedural protections that the school districts they have to afford to the parents in navigating this process.

[29:47] So it's really important, when you read that decision -- and it's not very long. I'd say the entire decision is, maybe, nine pages. But it does a good job, I think, of outlining parents' rights on this independent-assessment right.

[30:03] OK. So, now that we have all the assessment lined up, let's talk a little bit about present levels of performance, under the law, and goals.

Ernest: [30:14] OK.

Mark: [30:15] The reason I'm proceeding in this way is I'm trying to follow the framework that the federal government outlined in IDEA, which is any IEP starts, first, with a parent referral or a school-district referral for services assessment, a determination of eligibility, one of those 14 categories I talked about -- and for our purposes today, it'll be autism.

[30:38] And then, once you have conducted those assessments, well, now the duty of the team is to meet to write goals. And any goal basically starts with an understanding of where the child is today, or their private levels of performance.

[30:54] And so, what you need to understand about goal writing is that goals themselves have to be pulled from what's known about the child. If the assessors have done a speech assessment and they've identified areas of need in speech and language, or behavior, in OT, other areas like that, then it's important that a goal be drafted in every area of need that's been identified. And so this is another reason why you want those assessments in advance. You want to read them, and you want to identify areas of need that the school district has found.

[31:27] Now, school districts will often say, "Well, we can't write the goal for every area of need, because that would just take too long." And the response that I think families need to understand is, if no goal is written, then how are you, as parents, going to be able to track your child's progress in an area of need?

[31:45] The other thing, and essentially that goes back to the basic concept of parent participation and parent involvement in the process. If the school district tells you, "Don't worry. We don't need a goal. Our program already handles that." Oftentimes what I'll tell parents to respond is, "If your program already does this, then what's the harm in writing a goal? It actually will allow us to verify that my child is making the progress that you say he is."

[32:12] So these are little tricks, things that you pick up over the years. There are certain things that school districts will routinely say to parents that sort of leave you sidelined. You feel as if, "Well, they say that I'm not entitled to have a goal in every area of need." I would tell you that that runs contrary to law.

[32:31] The other thing that I'd like you to be cognizant of and share this with the team, if necessary, is, given the short span of time that your child is actually in school, it's really important that you aggressively go after areas of need for your child, because many times the intensity of this intervention in this age range is probably going to be the most intensive intervention your child will ever receive throughout their life.

[32:57] So I think, just in interests of making sure that our child is as ready for the world as possible, we have to make sure that we are not letting any areas of need slip off the table and essentially not be considered.

[33:13] So let's talk about who you might expect to see at an IEP, and who generally has

to be. The law actually changed recently and did afford parents the right to dismiss certain members of the team who they feel wouldn't be essential. And on the other hand, the law is very specific about saying who must be there.

[33:41] Typically, the mandatory members of the team would usually include the parents. A general-education teacher at all times, which is, it's important for you to understand: even if your child is entirely enrolled in special education, you have to have a general-education teacher there at all times to be able to share with the team how we would possibly have inclusion or mainstreaming opportunities for your child.

[34:06] That is, even though your child's enrolled in the SEC, what portions of his or her day or program or so forth can they access in the typical peer environment? So insist on a general-education teacher being there.

[34:20] The other person that I think you really need to be sure, in families, that is present at an IEP meeting is someone who's a representative of the district, usually called the administrator of the meeting. And this is the person who has an awareness and knowledge of the programs available in the district, and also -- very key -- the authority to commit the resources of the school district.

[34:41] Which means that if the person is at your meeting and they're saying something along the lines of, "While I hear what you're saying, and I really think it's important that maybe we provide help in this way, I don't really know if I have authority to grant it," and the moment that that is said, basically, you have to understand that the school district, it's really violating the child's rights.

[35:02] The reason being is that if the IEP team is there, and everyone's an equal member, and you've shared all of these notions about what the child requires, if the school district then has to rely on some other authority or person to decide what's appropriate for your child, then that means that these decisions are being made outside of the team, and that's simply not allowed under the law.

Ernest: [35:22] OK.

Mark: [35:24] OK. I'd like to speak a little bit about what it means to have a free and appropriate public education, and then least-restrictive environment. And once I've covered those, I think those would be really good opportunities to go ahead and stop with me doing all the talking and hear a little bit from some of the families...

Ernest: [35:46] [laughs] No problem. People here, as you're talking, they're posing questions, and they're agreeing with your comments. So keep going, by all means.

Mark: [35:58] OK. Well, I have to say, it's a little surreal. Ernest knows. He was in my talk. And typically, I'm not your traditional lawyer. I'm the kind of lawyer who likes to loosen his tie and roll up his sleeves and get down to business. So a lot of times my presentations rely on feedback from my attendees, and so I almost feel like I'm here talking into my speaker phone, [laughs] and I'm hoping someone's still on the line.

Ernest: [36:24] Oh, yes. They're still there. Lots of people.

Mark: [36:27] OK. Very well.

[36:28] OK. So let's talk about free and appropriate public education and what that means under the law. Well, FAPE. This is the acronym FAPE, and to understand it, the F in FAPE is easy: it means that the services and supports necessary for your child's unique educational needs shouldn't come at a cost to the family. Public education, or the P and the E of the acronym, simply refer to the agency responsible for doing all of this, and that is the local educational agency or school district where you live. They're the ones largely responsible.

[37:08] The difficulty, though, of deciding what makes an IEP appropriate is more along more of a technical analysis. And bear with me. I promise, it's not going to get too legal here.

Ernest: [37:21] OK.

Mark: [37:23] "Appropriate" is a combination of procedural compliance with the law and substantive benefits. Now, I just told you I wouldn't get legal, and now I'm giving you some pretty significant legal terms. I want you to bear with me for a minute.

[37:38] Procedural aspects of the law -- or sort of what I like to call the special-education rules of the road. And what that means is the law itself specifies certain things the school district must do in order to be procedurally in compliance.

[37:53] It's kind of like this. I like to analogize a procedural requirement kind of like: parents request an IEP, and the school district should convene an IEP meeting within 30 days of the parent request. That's a procedural rule of the road.

[38:11] So, when a school district is procedurally compliant, it's sort of like this. Imagine you're driving down a quiet country road, and you see a stop sign, and you promptly run right through it. Well, you've broken a procedural rule, in the same way that if the school district is requested to hold an IEP and they don't hold one within 30 days. While they've broken the rules, in the same way like running that quiet-country-road stop sign, it's important that they didn't honor your child's rights, but what's the impact? In other words, what did this violation result in?

[38:46] So, imagine the same analysis, which is we're driving down that quiet country road, and we promptly run the stop sign, and this time rather than necessarily moving through the intersection, this time we collide with another vehicle. Well, now we've got a combination of a procedural violation under the law together with a substantive impact, or a denial of them. In this case, you struck another car.

[39:10] Well, it's kind of like that for FAPE. When the school district is following the special-ed rules of the road, they're procedurally compliant with the law, but they also have to demonstrate that the program that they've created actually leads to appropriate

educational progress. OK?

[39:28] So, when the school district is providing an appropriate education, they've followed all the rules and your child is making progress against his or her goals and objectives. When the district is violating your child's rights to FAPE, they are violating the rules of the special-education road, and the foreseeable and demonstrable result is the child is not making progress.

[39:49] So, when you look at goals, for instance, if your child is not meeting goals year after year, and let's say the school district continues to retain goals year after year, then that's a good indication that your child is not progressing at a rate that would be foreseeable.

[40:03] Keep in mind, when an IEP team is devising goals and objectives, they're supposed to be writing goals that are reasonably calculated to be met within one year's time. So, if you've retained the same goals for three to four years, that's a pretty good indication that you're likely not receiving your educational benefit.

[40:20] And remember, because of the limited period of time that we have, basically, for an educational intervention, age three through age 18, or age 22, or graduation--whichever occurs first -- it means you have a very short window to make sure that your child is provided with the appropriate support.

[40:40] So that's FAPE.

[40:41] The most important, I think, arguably, decision came from the Supreme Court in the '80s, and this was "Board of Education versus Rowley." And I believe this decision comes from 1982. What's important for you to know about the Rowley decision was that, in that case, the court said that school districts are obligated to provide the base floor of opportunity for a child, meaning that the standard that are kids are educated under -- meaning kids with disabilities -- is vastly different than the typical children who attend school with them.

[41:20] A family dealing with a child who's demonstrating typical needs, they're under the understanding the school district is there to optimize the child, get the child ready for college and other things.

[41:32] The Rowley standard seems to establish a different standard for our kids. And what it basically says is that we don't necessarily have to optimize the child or allow the child to receive the best education possible, but rather one that provides a base floor of opportunity. Which it's kind of a sad commentary, but you need to understand -- and believe me, when I say "sad commentary," guys, I'm speaking casually, because I also am speaking about my own family here, so I feel like I'm amongst friends. Please give me some latitude.

[42:05] But I want you to understand that, since those early days, when the court was first

analyzing a child's educational rights, prior to the Rowley decision and prior to IDEA for the very first time, kids with disabilities really had no legal rights to school. I mean, most of them were typically institutionalized, or they stayed at home with their parents all day and didn't receive an educational benefit.

[42:29] So, when Congress first looked at the law, they said, "Well, we've got to figure out a way to get these kids into school." And the first challenges were that school districts across the country just had no expertise whatsoever in getting kids into school. They hadn't done it, traditionally. And so, what the court said was, "Well, at the very least, you have to set up a platform from which this child can learn."

[42:49] Now, later versions of the law, though -- and namely IDEA '97 and after -- established something different, which is we're no longer looking at just getting the child into school, but we're looking at meaningful educational progress. And the case I like to cite to most frequently is a case called Zachary Deal, and it's called the "Deal Autism Case." And if you've read any case law in autism, this is one you want to pick up for sure.

[43:17] And what it says, in the court of appeals decision in Deal, was that Congress's intent, at the very least, was to provide meaningful educational benefit gauged against the child at issue. Which is, it's not enough to say, "Well, these children are all entitled to go to the special-day class and make progress as a class," but rather, you have to keep the individualized analysis present at all times of the child's needs. Which means that just because little Sally or little Jenny is performing at X level, if your child is performing at a different level, it's not enough to have merely trivial progress, but rather progress gauged against the potential of that child at issue.

[43:57] And I don't know about you, parents, but from my perspective, the thing that keeps me awake at night is: is my child going to be ready to be able to do as much as he or she can in the world? Now, I'm not unrealistic in my expectations, but I think, at the same time, it is realistic for me to expect my child will be able to do everything that he or she is capable of doing. As long as I keep the analysis individualized, then I think there's a good chance that we'll make progress on those goals.

Ernest: [44:27] Right.

Mark: [44:28] So that's FAPE.

[44:30] I want to talk about the second part of the law -- equally important, I think, in many, many respects. Many of you are aware of the landmark Supreme Court decision, "Brown versus Board of Education." And what that decision was based upon was the notion that you cannot segregate Americans based on conditions -- really, in that case, conditions of race or lineage.

Ernest: [44:57] Sure.

Mark: [44:58] Even if the schools are equal, you can't say "separate but equal." That concept was thrown out by the court.

[45:05] Well, in the same spirit of the "Brown v. Board" decision, and later decisions that came down thereafter, the court embraced this anti-segregation piece of the law.

[45:16] And when we talk about least-restrictive environment, I want you to consider this for a moment. And this is, maybe, hard to do. Usually, I do it by holding up my hands, extended sort of to make a clothesline.

[45:29] And I want you to think, on one hand, on one end of the clothesline is what we would consider the least-restrictive environment. And that is the child's home school, where he or she would have gone but for his or her disability.

[45:44] And on the other side of the clothesline, imagine this is what's called the most-restrictive setting. And this is perhaps a placement where the child has been completely removed from exposure from typical or typically developing children and segregated to receive educational benefit. Oftentimes, the most extreme version of the most-restrictive environment is typically complete removal from other kids who are typically developing, even, perhaps, in a residential placement or so forth.

[46:13] And what's important for you to understand -- and this is really the key to much of what parents are asking for in terms of getting supports and services for their child -- before a school district can take steps to move your child from their home school with typical children to maybe, the special-day class, which somewhat sits about the middle of the clothesline, imagine that they have to first provide, or at least show that they've considered providing, aids, supports, and services as necessary for your child to make progress.

[46:42] So, if you're going into an IEP meeting and you're thinking, "My child could access his or her home school but for these pragmatics challenges or social-skills issues," well, that would be a perfect argument for you to make at the IEPT meetings. You'd say, "My child could access his or her typical peers if the school district was willing to provide adequate support in social skills." And similarly, it goes for behavior, and it goes for the consideration of whether one-to-one aid is needed for your child and so forth.

[47:12] And so, understand that the school district, oftentimes, will want to go straightaway to the special-day class and say, "This is a program we've created. We're very proud of it. And typically, kids with IEPs go to this program, and we've gathered together all these resources."

[47:27] And realize, essentially, what that has done -- although, frankly, I'm happy any time a school district really does focus on developing an appropriate program or a really strong program. But in the same way, like "Brown versus Board," even a quality program cannot be used as a basis to justify segregation. So understand that your child is entitled to an individualized analysis, not just because the school district maintains a special-day class.

[47:54] Many times this notion of restrictiveness is really not clear to families. Many times they'll ask for things like, "I need a one-on-one aid," and the school district will come back and say, "Well, we can't give you an aid." That's too restrictive. And understand, this is sort of a perversion of the law. The law does not talk about the method of intervention; the law talks about the degree of removal of the child from his or her typical kids.

[48:20] Now, understand, this goes both directions. Sometimes parents are asking for a more-intensive environment. And I'm not affixing any kind of judgment call to a more-restrictive or a less-restrictive setting. I just simply want you to know how Congress looks at it and what their expectation is.

[48:40] I've known many children that, frankly, become victims in a general-education setting. And you may, as a parent, or as an IEP team, decide this child needs more protection, that we can afford to buy a special-day class or buy a higher-quality teacher or so forth.

[48:53] And so there are always reasons for making those adjustments. I just don't want you, as a family, to feel that the only option you have is what the district offers. This is a concept called predetermination. It means that before the meeting is ever held, the school district already knows where your child will go and what your child will have received.

[49:12] And understand, the reason that this is so completely wrong is, if the school district alone is making decisions regarding what is needed for an appropriate education for your child, the parents, the parents' expert, they're removed from the calculus. So it's important that you understand that an IEP is a process that's dynamic, that's inclusive of the parent, and if the school district's making decisions on fiscal restraint or convenience or so forth, that these are impermissible adjustments, and you have to know that as you are sitting in that meeting.

[49:48] Because -- I hate to say it, folks, but many times, even in meetings that I attend with families, the school district is meeting before we're allowed to even come into the room. And I've had educator clients who told me that many times they are there, the school is telling them, "So this is what you will be offering this child." And it's sad because what happens is well-meaning educators and professionals who really work for the children are being told in advance, "I know you may think this is appropriate, but we're not authorized to afford this to the child."

Ernest: [50:21] Wow.

Mark: [50:22] And so you have to be the advocate. You have to be the person who says, "Wait a minute. Number one, I'm business-like. Number two, what I'm asking for is reasonable. I can prove it with these assessments, or if I don't have it, I have a way of getting further assessments under the law." And then, as an equal member of the team, you have to be there to make it clear that your child, whether it's your child, your grandchild or so forth, has a program in place that's meant to address the areas of need that they're going to need as adults.

[50:56] I think, on that point, that sort of puts us to the place where I think we can start to answer some of the questions.

[51:07] I think I'd like you to understand one last concept, and that is that, ultimately, it's the school district that's charged with devising an appropriate education. In other words, the parents may or may not agree with it, but it's the school district's responsibility to show that it's put one together, and meaning an appropriate program.

[51:26] If you are unhappy or concerned with an educational program for your child, the words you should consider using are: "Is this program appropriate for my child in a least-restrictive and least-segregated environment?" Words to avoid: "Is this the best or optimal program for my child?" Because, as you know, under Rowley, the school districts are not obligated to give you the best or optimal.

[51:50] So you have to understand that when you're speaking to the districts, you have to use the language that the law has created. And as parents, frankly, we want the best, or we want the optimal for our child, but the law already has said that clearly that is not what we are entitled to. We are entitled to a program that's calculated against the unique needs of the child that's going to lead towards a measurable educational benefit.

[52:14] So I hope this little bit of a workshop has been helpful. I've been speaking with Ernest about the possibility of doing follow-up workshops, and I think we can try to do something along the lines of goal-writing and some of the other supports and services, down the road, to help guide parents.

[52:34] So I think, Ernest, what I'd like to do is turn it over to you now. And as questions are coming in, some of them I've already prepped, in terms of the questions that were already posted. But if you'd like to guide the discussion...

Ernest: [52:46] OK. That's good.

[52:48] I have someone here who left a very interesting comment. They said that "This Mark guy is so smart, he dreams in Technicolor."

Mark: [52:56] Well, that was awfully sweet.

Ernest: [52:58] [laughs] Yeah, it was. Man, I can see why you're an adjunct professor at UCLA. Man, we're really fortunate to have you here. I mean, you are just obviously very well-versed on this. And since you've sort of drawn out for us the basis for what's going on here, and what an IEP is and all the people that are in the room and specifics in the law, we have about 104 questions that are up there now.

[53:32] So I guess this is going to be an interesting challenge, for me, to kind of figure out which ones to ask. I guess you had some that you had prepped before. Let's see. Maybe we can sort of knock them out one by one here. Do you have a list in front of you?

Mark: [53:52] Yeah.

Ernest: [53:54] Or I think I know which ones you're talking about. I think you've had these a while. So let's see here. I'm sorry?

Mark: [54:03] I think I have the first 16 questions.

Ernest: [54:08] Oh, great. OK. We can go through those, then.

[54:11] I've got one from Marilyn Roberts. She's from Federal Way, Washington. And her question is: "I'm confused. I thought the teachers in the school were to write IEPs. If it will benefit my grandson, I want to learn how to write an IEP, please."

[54:27] And you were right. The title was a little bit misleading there. Teachers -- well, the school district, of course, writes them. Maybe that question was already answered.

Mark: [54:40] Yeah. And I think, just number one, for the grandparents online today, please accept my heartfelt thanks, as a parent, for the grandparents' participation. I know that many times you didn't sign up for this. As grandparents, you were expecting sort of to spoil your grandkids and so forth. And oftentimes, our grandparents, they come in and they keep our marriages alive and they give us a break, a little bit, and those kinds of supports. If your kids aren't telling it to you, let me do it on their behalf. We're really grateful for any help from family.

Ernest: [55:24] Right.

Mark: [55:25] But I think, to answer her question, it's true that the school district is responsible for devising the IEP. But I think maybe it is fair to say that parents are part of the writing process.

[55:38] And the same thing goes for people that the parents bring. The law says that if you bring a member of the team as a support person, then you're entitled to have that person speak as an equal member of the team as well. So, for you aunts and uncles and grandparents, you can't be silenced, guys. You're entitled to share your observations and have them considered equally as an equal member of the team as well.

Ernest: [56:04] OK. I'm glad you said that because, matter of fact, we've had quite a few questions over the past two days from grandparents who are trying to help a child. And they're primarily trying to learn all about this stuff, kind of running steps to pick up all this information. And it's great that, over the past couple of days, we've had people here to at least kind of help them answer some of those many questions.

[56:35] Speaking of questions, we've got one from John Curtain, from Salt Lake City, Utah. And he asks: "How can you know what is reasonable to ask for I should say? I want everything that my child needs, and it seems that they end up with the minimum."

Mark: [56:51] OK. Oftentimes, what I will recommend for families is you have to understand, first, what the law says -- especially the most recent version of IDEA, the

2004 version. It says, and the Congress used specific language: "Where practical, or where possible, school district is to rely on research-based and peer-reviewed methodology in providing an educational benefit."

[57:16] Which means that the first step, I think - and this is challenge for families. You have to become sort of a mini-expert in all of the areas of need that your child has, which means you have to have a good handle on OT, speech, behavior, so forth.

[57:31] And I would say that your first analysis is obviously talk to your child's private experts, if you have them. If you don't have them, then you need to get on the parent discussion boards. OK? Especially if you can look at some of them that have more of a national focus.

Ernest: [57:49] Right.

Mark: [57:50] Because, in some parts of the country, guys, I know that many of you are getting no help at all. I've done some speaking around the country, and a lot of times, when I do my talk, parents will come up and they'll say, "I understand. You said these things are in the law. But my school district doesn't provide any ABA, or my school district doesn't provide support. That just doesn't happen." And the reality of the situation is that the only way that it starts to change or get better is when parents unite and stand up.

[58:19] So, what I really recommend is, if you're unsure about what your child should be getting in your IEP, I think you need to make connections and friends with other parents in the community, especially if you know a family that seems to be doing well within the system. If they've been able to get certain services and supports, ask them, "Can I see your IEP?" or "Would you mind if I spoke with your therapist and got some ideas about what's needed for my child?"

[58:48] Now, the same guidance goes true, though, guys, here--and when I say "guys, " it's the unisex term.

Ernest: [58:56] OK.

Mark: [58:57] [laughs] What I want you to be thinking about, guys, is this notion of: be careful of who you're affiliating with as well. Which is, just because someone is known to be ultra-adversarial with the school district, you want to be cautious about bringing that person in with you as a support person, or sort of hitching your red wagon to their legacy. Sometimes folks who are known for being tough parents or harsh parents, a lot of times they may get things for their child that they only can get them after extensive, extensive fighting and frustration and exhaustion.

[59:35] And I would say that, wherever possible, I'd prefer if you approached the IEP process from the notion of informed collaboration, which is, "I need this because I need this. And I can demonstrate how it's research-based, and I can demonstrate, based on my child's present levels of performance, why goals are needed to address these challenges."

Once you've got that, it's really quite hard for the district to say no...

Ernest: [59:59] Right.

Mark: [60:00] Because you've approached it as a businessperson. You've approached it logically.

[60:03] On the other hand, if you go in screaming and yelling, you may prevail that day, but I can promise you that if your IEP goes on that list of parents, then next year they're thinking, "Oh, goodness, when that person comes back around, you can be sure I'm not going to do that again."

Ernest: [60:17] Right.

Mark: [60:19] So let's build some long-term relationships with our educators.

Ernest: [60:24] Absolutely.

Mark: [60:25] Because I think they're there for us, too.

Ernest: [60:26] Right. The person who said it best, I think it was Chantelle. On the first day, she says, "You get a lot more bees with honey than vinegar," I guess, or a lot more bears with honey than vinegar, or something to that effect.

Mark: [60:39] Yeah. I think that's true. Absolutely.

Ernest: [60:44] Let's see here. I've got one question from Pam, from Baltimore. It just came in, and I thought this might be sort of right up your alley here: "What is the best way to prepare for mediation?"

Mark: [60:57] OK. Well, mediation, assumes probably where after a due-process filing. OK? There are some provisions in the law that just have mediation only and not due process. I would say that mediation is really a legal process. And as a parent, if you're going in, I think you have to understand you're being held to a higher standard, in terms of understanding.

[61:22] What you would probably want to do to go into mediation is have a clear view of why the school district has violated your child's rights, and base your arguments on facts, on the documents themselves. Many times I like the documents just to speak for me in a case.

[61:42] And then be clear about what it is that would be necessary to get you back to a place where you belong. Special-education law, as a whole, it's not driven in traditional ways, like you might think, about legal process. It's not as if you can sue the district for tons and tons of money. It just doesn't work that way. Many times what we're doing is we're bringing a cause of action against the district to secure service.

[62:05] And so, if you're looking for help and assistance, then be clear about what would

be necessary to help your child and have that all researched in advance, so when you're there at the district, you've got a presentation of what would be most appropriate to help you.

[62:20] What I try to do, as I'm negotiating with a party or a school district in one of these matters, is I like to find out who it is that the school district already has contracts with. In other words, sometimes you may need supports and services, and it just so happens that the school district already has a master contract with that provider, so sometimes knowing that piece of information in advance helps you when you are making a request for a service. If you ask for the agency that just so happens to have a contract with the district, the district's often more inclined to help you by providing that service, and so forth.

Ernest: [62:54] OK.

Mark: [62:55] I mean, you don't want to always be the pioneer on a therapy.

Ernest: [63:00] Right.

Mark: [63:01] Sometimes exploring therapies that already exist well within the district or that they're familiar with can also help to smooth the mediation and make it go for you in your child's favor.

[63:12] And I would say, above all else, get a lot of rest, and don't go in stressed...

Ernest: [63:18] [laughs] OK.

Mark: [63:20] Because the one thing I think school districts, again, rely upon, when they've taken an adversarial footing with a family, is that they can count on showing the judge or the hearing officer that you're unreasonable, that nothing they can do will help you or make you happy.

[63:36] And again, I don't think that's who we are, as parents. I think we want to help our kids. We want to do it in a realistic way. I think most of us are cognizant of the fact that we are taxpayers and we own the schools. And so, what we're asking for is, basically, we're asking for the government agency that works for us to do the job that it's been hired to do.

Ernest: [64:01] Right.

Mark: [64:02] And at the end of the day, I think it's our duty to make sure that our child is as ready as possible for the democracy, meaning, as parents, no one is going to be interested in our excuses when our kids aren't ready for the world. They're just going to say, "Why didn't that parent help the child more?"

[64:17] So I think, as long as you understand, at all times, wrap yourself in the duty and the honor, I think, that we have as parents of these most-special children, is the notion that we're their protectors. It's our job to make sure that they're ready.

Ernest: [64:33] Right. Wow.

[64:37] This kind of dovetails me into this additional question that just came in here. It's kind of a little bit of a long one, but I recognize her name. We had talked before. And I think her name is Gerry and she's from Orlando, Florida. So she has sort of a statement and a question to follow, surely. So I'm going to sort of do it here.

[65:00] Her comment is: "My child has been in a total of six schools, including his early-intervention preschool. The home school said they no longer had a program at the school, so he was sent to another for two years.

[65:17] They have now said that the school no longer has the program, and he is being sent to another school. But his IEP needs to be updated and the new testing done before he can get sent to the new school.

[65:29] In the meantime, he's in a school who no longer has a behavioralist. They are dragging their feet about getting the test done. How hard do I push to get him in the right program? He is now being picked up by the bus at 6:45, and school starts at 8:45."

[65:45] Sounds like she has a lot of frustration here. And maybe this is a question for you, I'm not sure, but I figured I'd give it a shot here...

Mark: [65:53] Well, there are so many issues in that. Well, let's take them one at a time.

[66:01] Number one, remember least-restrictive environment analysis, which is your child's intended, and entitled, frankly, to be educated with peers in his or her home school, first, as a consideration. So, what it sounds like the family's been coping with is an issue of shoehorning, of predetermination, that rather than devising an individualized program for the child, the school district has been placing the child in placements of convenience.

[66:32] The danger I see with such an approach -- and I'm sure mom is feeling this already -- is, just at the same time that the child is probably starting to acquire his or her environment, maybe have a shot at making a friend or having a place at the school where sensory stimuli or behaviors are starting to come under check, at the same time it seems, suddenly, we're moving him onto the next place. So, when we look at appropriate placement, we want to look at, first, starting with assessments.

[67:07] So I think the answer, for Gerry, is she needs to push pretty heavily to get assessments done today. And I mean right away. Let's get them done. Because once you have that information, either you're going to get really quality info from the district or you're going to be triggering your rights to independent assessment.

[67:23] But one way or the other, the longer you wait to assess, the more likely it is the district's just going to say, "Well, since we don't have any up-to-date data, we can just place your child in this program." And every time that happens, we tap into all of the difficulties that we just know come with autism so many times...

Ernest: [67:44] Right.

Mark: [67:45] Difficulty with social interaction, difficulty with transitions, the need for a lot of previewing, and sometimes visual support. And many times our teachers have to be prepared to understand the unique needs of that child. And so, every time that staff is adjusted, well, guess what: that's a new learning curve for the child and it's a learning curve for the team.

[68:09] And now, just an issue on transportation, and this is actually a right of the child. California has a really nice briefing on this on the Department of Education website. I'm not sure about the rest of the country. I'm sure that there are various sources here.

[68:26] But understand that if your child has unique behavior challenges, riding on a bus for two hours every day, probably without adequate support -- most bus drivers, many of them lovely people, but don't necessarily have the adequate training to deal with kids on the spectrum.

[68:46] You've got an unsupervised adult, basically an untrained adult, with a child, potentially demonstrating a lot of issues, on a two-hour bus ride. By the time that child arrives at school, I can only imagine the state of mind of the child in terms of being ready to learn. It's got to be just absolutely traumatic.

[69:08] So, I would suggest that that family immediately trigger the assessment, get into a 30-day IEP, make a request to get into that meeting. And be prepared to go through some of the factors I've just discussed and analyze: how are these issues impacting this child? Because it allows you to look at it analytically instead of looking at it from an emotional perspective -- which, by the way, is justified. I mean, no one wants their child to have to suffer this way.

Ernest: [69:37] Right.

Mark: [69:38] And I know how that feels, guys. Believe it or not, even I have to deal with my school district giving me a hard time, at times. And it's just we have to keep our composure, and we have to be prepared to explain to them why, although maybe they're operating from a place where it's really trying to help, that it's really not helping.

Ernest: [70:00] Right. Right. I'm glad you really got into it here. I'm sure she's going to feel a lot better with the answer here and then kind of get a better idea of what to do.

[70:11] I've got a rather urgent question here from Carrie, from Michigan. And she says: "Please, please, ask what to do when a district has taken away a service without ever meeting or working on a goal."

Mark: [70:28] Well, the school district has a duty under the law called Prior Written Notice. And it's a little confusing in the way that it's phrased because most people, when they hear this notion called Prior Written Notice, they think it means that the school district has to give notice before it does something. But it's not necessarily the way it

works.

[70:49] What it basically requires is that any time a school district proposes to initiate or change a child's IEP, placement, services, assessments, any of those factors, they have to provide a seven-point analysis to the family. And what that analysis basically contemplates is looking at all the reasons for doing this, all the assessments they considered in making that decision, all other factors, and then they have to give a statement of the parents' procedural safeguards and things you can do.

[71:24] Now, when you look at that scenario from just sort of a generic concept, let's imagine, well, the goals and objectives were likely based on an assessment. The assessment said that the child had a need in an area, and yet the school district failed to work on that or meet the goal, and then the services were FAPE'd.

[71:47] Any time we're looking at service changing, we always have to first look at whether or not the child's unique needs call for the intervention. And so it's unlikely that the child has sort of outgrown the problem. I guess that's always a possibility. But I gather from her phrasing of her email that she's deeming this to be something of an urgent need or a service that she requires for her child.

[72:12] And again, think of this from a combination of procedure and substance, which is, OK, the school district has a duty to hold an IEP meeting before changing the child's program, right? At the meeting, they make the decision to change the program. They're supposed to then issue Prior Written Notice explaining why they did what they did.

[72:30] Let's say they don't hold the IEP, or say they don't issue Prior Written Notice, but ultimately it's a service the child does not require. That would be an instance of running that stop sign on the quiet, country road when no one's around.

Ernest: [72:42] Right.

Mark: [72:43] On the other hand, they break those rules of the special-ed road, and it results in a denial of educational benefit for the child. Well, that's the definition of denying FAPE.

Ernest: [72:55] OK. I have one here. We're up to 120 questions, [laughs] so you might have to do this again one of these days because there's just so much.

[73:10] Let's see. One question here is Beth, from Brownstown, Michigan: "My school district does not have an autism-impaired classroom in any elementary school in our district, so they ship them off to other districts. How can we, as parents, demand a classroom in our district?"

Mark: [73:34] Well, I guess, doesn't it go back to local politics, right? I think the chances are parents at a time trying to bring due process and demand a change in the scheme of things is going to be rather difficult. Anytime we get anything done in America, it's because parents or like-minded citizens get together and say that "We need a

change."

[74:02] And I think school boards are elected bodies, which means that, when they have their elections, I would identify, perhaps, members of your board who are notoriously anti-child [laughs] in the special-needs context and seek to have them replaced with someone who is friendly. And of course, if you are looking at this situation from a child at a time, and maybe you're not up to the systemic change issue, well then, start with a least-restrictive environment analysis.

[74:37] And again, this is based out of the "Brown v. Board" theory, which is you can't just remove a child, even if it's a stellar program in another district, just for economic or administrative convenience. So the school district has to demonstrate how it considered whether or not needs, supports, and services could be brought to the child's home school to make a program there.

[74:59] Now, it's one thing for me to tell you what the law requires, but I want you to think about it from a broader context. If your child is raised and educated amongst his or her peers, that has an effect, not only of preparing your child for that community but also for preparing the community for your child. And so, for the same reasons that we don't segregate persons in our country, or we're not supposed to, under the law, when we have exposure and chances to meet one another and understand one another, it leads to a greater understanding down the road.

[75:35] So I would say that, as long as the district continues to do this, it's very likely that the children in your small or large town, frankly, will not understand autism, will not understand how to make a friend with a child with autism. And so I think we are creating more difficulty for society down the road.

[75:58] And then the other issue is more of a therapeutic consideration. And that is, in order for a child to truly demonstrate an acquired skill or a task, they have to be able to demonstrate it everywhere -- how they demonstrate at home, how they demonstrate at school.

[76:14] And if your child's entire intervention is being based in a remote community, they may be doing fabulous at that community, that school, but the moment they come back home, if that's not carrying over to the home setting, then that's not truly acquired; he becomes situationally proficient. The child can do one thing in one context but not another, and that's not true progress.

Ernest: [76:36] [indecipherable]

Mark: [76:37] So there's a clinical justification, there's a societal justification, and the law itself contemplates consideration, first, of the home school.

[76:46] So, again, get yourself organized through the local parent group. Like I said, you could look for a resource like Autism Speaks, something on a national level, and this would be a way you could get local, like-minded parents.

Ernest: [77:03] OK. That's probably another question that I kind of have is people want to know sort of where can they look for information like this related to their home state? Does Autism Speaks cover that?

Mark: [77:20] Yes. One of the things -- I used to be affiliated. Autism Speaks has been a pretty large factor on the national scene these days. And basically, the agency, or group or so forth, was created from a gathering of like-minded individuals [indecipherable] . Here in California, we started with Cure Autism Now, and the notion was to get like-minded parents together for the purposes of pushing research. We were really dedicated to pushing the envelope on getting the research going.

[77:57] But the one challenge for Cure Autism Now had always been: how do we get people to look at other issues, educational issues and other things? Parents need more than just research. We have to have support channels for our kids.

Ernest: [78:11] Exactly.

Mark: [78:12] And so the idea of the Autism Speaks model was to bring one national voice. Part of the parents who volunteered and do volunteer with Autism Speaks, part of our demand was that if you're going to help kids, you're going to have to help them everywhere. And so they've been rolling out regional supports.

[78:30] And part of the challenge has been to gather supports and services that are localized by region, because it's fine and dandy to list 80 resources in Los Angeles, but if you're in Cedar Rapids or so forth, you need to know what's around. So the resources have been arrayed by region.

[78:51] And I think the general rule is that the larger the city, the more likely it is that you're going to be able to get help. We find that most of the companies and therapists that serve our children, they tend to place themselves where the most people are, because that's how you support a practice.

Ernest: [79:09] Right.

Mark: [79:11] And so, I know a lot of us -- autism isn't picky. It pretty much will find us where we are. But I think, really, you have to give some consideration to moving somewhere closer to a major city center.

Ernest: [79:25] Mm-hmm. Great answer.

[79:28] And we have another question here from Carrie, of Saginaw, Michigan. And she has a really great question, or a situation, actually.

She says: [79:38] "I have an IEP for my son. He had speech services. But at the end of the last year, two goals were never worked on at all. However, they discontinued those services, saying he did not need them. There was no data to support this discontinuation.

[79:56] I, however, received his state testing, showing that he is below the national

average. What does the law say about goals having or not having to be met before services can be discontinued? I'm begging you: please read my question tonight."

[80:12] Well, you got your wish, Carrie.

Mark: [80:14] [laughs] OK. Services and supports are devised from educational assessments. And what you want to do is -- I think most people, simply look at how your child's doing, and that's usually sufficient to come up with probably 10 reasons why a goal like this is needed.

[80:37] We get this in California, too. Therapists will be making arguments like, for instance, a child's on the playground and they'll say, "The child has gross-motor needs such that he or she can't walk up and down stairs or climb on the apparatus at the playground." And they'll say, "Oh, but they don't need those in order to access their educational benefit."

[81:00] Well, there's two ways I want you to look at this. One is, IDEA 2004, the most recent version of the law, changed the duty of the school district, looking specifically at academics needs, to expanding it to academic and functional needs of the child. Which means, if you make the argument that the child doesn't need it in order to access his or her education, it's sort of irrelevant when you consider the fact that the law itself has said you have to look at the function of the child as well.

[81:27] The other thing is that, much like that silly argument about the gross-motor challenges for a child on the playground, there are so many reasons why a child needs to go up and down stairs in life: for full employment, for fire safety, for just any manner of participation.

[81:49] One time I had a child who attended school in a single-story school, and the school district made the argument that, because there's no stairs at the campus, there's no reason the child needs that service. And of course, what did we do? We looked at the fact that the school was based on a hill. And so, in order for the child to walk to and from school, they had to be able to manage walking on an incline. And so there was your educational connection.

[82:17] And I would, of course, tell you that arguments like the child doesn't need to run at school, or the child doesn't need to climb on the play structure, they're not very caring, frankly, but they're also illogical. And so, if you step back and you think about the idea that, no, why do you even have a play structure at the playground? Because this was intended to serve the physical education needs of the child. It also deals with things like balance development, and sometimes if the child has underlying OT needs, proprioceptive or vestibular processing of information.

[82:52] And so I want you to look at your state-specific standards. One of the places you could look for speech-specific guidelines, about when services and supports are needed, would be a website that's maintained -- it's a national group called ASHA: American Speech and Hearing Association. A-S-H-A.

Ernest: [83:12] How do you spell that?

Mark: [83:13] Sure. ASHA.org.

Ernest: [83:18] OK.

Mark: [83:19] And ASHA is sort of the authority on speech and hearing in the US. The nice thing about ASHA is that anytime a speech pathologist, many of them, the reason you can identify a therapist who's a member of ASHA and is receiving ongoing professional training is they'll usually list the acronym CCC after their title. And that gives you a good way of knowing if they are a member of ASHA and that they are on board with continuing education through their profession.

[83:51] And what I like to do, if I'm up against an obstinate speech pathologist or someone who simply is making this argument, I like to go into the ASHA database of articles and print them out, and then, when I go to the IEP meeting, I say, "You're a member of ASHA, correct?" And they say, well, usually, "Yes, " if they are. And then you say, "So, do you agree with many of the directives?" And they say, "Yes, many of them."

[84:13] And then you might say, "Are you familiar with the article written by this person on this date, talking about the educational implications of this part of speech?" And now it's like, without being too argumentative, frankly, you've been able to show that therapist that you're not just going to take their word for it but, frankly, you disagree and you've done a little bit of homework.

Ernest: [84:33] Right.

Mark: [84:34] And again, I would say, as long as you ask questions, don't assume... I never recommend for parents to go head-to-head with a professional like that.

Ernest: [84:42] Right.

Mark: [84:43] Oftentimes, you'll end up looking irrational or silly because, unless you have a master's degree in speech, chances are it's going to be hard for you to keep up with the expertise of that person. But at the same time, it doesn't hurt you to go to the public articles and do a quick search on articulation errors or pragmatics, or expressive or receptive language difficulties, phonemic awareness, or so forth.

[85:09] So you can get most of the information you're going to need just by understanding a couple of the keywords to ask.

Ernest: [85:20] All right. Man, this is great stuff. I just want to share some of the comments here. We had Suzanne from Andrews, Texas said, "Thank you for the conference. The speaker is awesome. Please have him come back."

[85:38] So there's just a lot of good feelings in here. People have a lot of questions for you. There's one I'm going to take here, which is Brie from New York. And her question

is, "If a child is in an inclusion class, is the teacher allowed to divulge any information regarding their IEP to other parents or staff ever?"

Mark: [85:58] No, not ever.

Ernest: [86:00] OK.

Mark: [86:01] That's an easy one, and I would direct you to my next point. The reason being is your child has privacy rights. And there are all kinds of ways that disclosure of that information could really cause harm. Many parents with generalized kids, they get frustrated with the expense of our children.

[86:24] [siren]

[86:27] They almost feel as if our kids somehow are taking from the system. And that could create all kinds of division in the parent community and frustration. Also, you know you certainly don't want to give children any ammunition to either harass the children with.

[86:45] And I think our lives, guys, as parents with children with autism, are already open like a book anyhow. I think we have to preserve our privacy in that we need in the same way that if you had a pressing health condition, you would expect your medical information to be kept private. As such, I think you have the right and the expectation that the school district will honor your Federal privacy rights for educational needs (FERPA, FERPA statute).

Ernest: [87:22] Well, let's see here. Man, oh, man. Sorry, I'm looking at that screen here. And there's just so much here. One person here says, "Can Mark come to my IEP? He's awesome."

Mark: [87:34] [laughter] Well, I don't know. It depends on if you're in California.

Ernest: [87:39] Right. Just before I get to the other questions (I know your website is the WoodSmallLawGroup.com), could you give us a phone number as well to your office?

Mark: [87:59] Sure, it's there on the website.

Ernest: [88:02] On the website? OK.

Mark: [88:04] Yeah, but typically you could give us a call. But I want to give you this disclaimer. First thing is, again, that my practice is limited to California. And even in California, most of my focus is specific to Southern California. So even the northern districts and so forth, even though I'm licensed to practice there, sometimes it's not the most prudent thing. It's important to get the local lawyer who understands the way of things.

[88:34] That being said, I acknowledge that many states in the country don't have lawyers. I think some of my friends out of Oklahoma had shared once that they

approximately three lawyers in the whole state, two working for the district and one for the protection and advocacy there.

[88:51] So I understand that you may not have ready access to lawyers. But try to find someone local. And that can help. But that number is 626-440-0028.

Ernest: [89:08] OK. And that was so people understand again that you practice in Southern California. So if you're outside the state, that's different. You have to find a lawyer for your area specifically.

Mark: [89:21] And it isn't...

Ernest: [89:22] What should people look for in a lawyer actually when they... I'm sorry. What should people look for in a lawyer to go to an IEP? Could you paint a picture for us what that's like?

Mark: [89:33] Oh, sure. Well, number one is this is just general guidance for anyone on hiring a lawyer. And I think that you want to sit down with that person and then make sure that the lawyer's style and approach mirrors the family's style and approach.

[89:52] One of the worst things you could do is hire a lawyer and then have them go in and completely destroy a process of collaboration that you've been working for years to build.

[90:03] You want to have an expectation of the method of communication with the lawyer: how they do it. And just to give a brief understanding there of a lawyer's life in special ed: if you hired other lawyers in other parts of your life or field, understand that a special ed lawyer is not the kind of lawyer that sits behind a desk all day.

[90:29] Most of our work is sitting in a classroom, usually on a chair made for a three-year-old, working with a family on an IEP. Or sitting in a district boardroom or courtroom, bringing a due process case.

[90:44] So it's important that you understand that this very much a field where we take it to the children. But you want to have a clear expectation of how these are going to work, what your matter theoretically could cost you. These are the questions that you need to ask dealing with any lawyer.

[91:04] Now, dealing with special education, this is one of those fields that it's not a situation where you can say a lawyer is a lawyer is a lawyer. You can actually do a great deal of harm to your child's IEP by hiring someone who doesn't understand the context of the law.

[91:21] For instance, your neighborhood personal injury lawyer, something like that...

Ernest: [91:26] They are not the right person.

Mark: [91:27] They are not the right person, unless they have been trained and

thoroughly understand what's going on. And I'll give you a perfect example, for instance, a lawyer who practices in family law.

[91:39] In California, we have a standard in the law that the court is to act in the best interest of the child. Well, what I was just sharing with you during the talk was that it's not what's best for the child under the law, but what's appropriate.

[91:53] So can you imagine if a lawyer comes in, the first thing you say that this isn't best for the child? You can look like a bit of an idiot, because you brought someone in who doesn't understand that traditional notions of putting the child first isn't something that exists just as a matter of rights in special ed. You have to be able to craft an argument that's formed around the understanding of what the statutes and the law says.

[92:19] And so, again, make sure that that person has a license. You can verify that. Most of the state bars around the country have an online version of their website. You can look them up, look up where they were educated, if they have complaints.

[92:41] And there are folks out there who claim to be advocates. And understand that I believe any state has a license to be an advocate. It's usually something the law understands that they are people who come in who advise and guide families. But they can't practice law. They can't interpret what law means.

[93:02] And so while you may have really great advocates out there, and I know many of them who are really stellar, great people, their job has to stop when your case calls for legal analysis.

[93:14] Their job is to be there to support the family, to guide you to resources, and ask the right questions to perhaps trigger support and services to the child. But the moment an advocate starts giving legal advice, they're engaging in illegal activity called the unauthorized practice of law.

Ernest: [93:31] Right. Well, I'm glad you mentioned this, because one of the questions we have is, "Is it advisable to bring an attorney to the first IEP meeting?"

Mark: [93:43] Well, I would say it depends on the lawyer, right?

Ernest: [93:49] OK.

Mark: [93:54] I often go to the first IEP meeting. And I ask families the scope of what they want me to do in the process. In other words, I'll ask them, "Why do you want me there?" And usually I find that special education matters break down into three types of cases.

[94:12] The first case is sort of a parent that's getting ready to establish an IEP, and they need guidance. They need someone who understands the law. But mostly, they don't have any real legal issues. And there, my criteria is to help them to have a smooth process, OK.

[94:27] There's a second type of representation. And that's the parent who feels that their IEP is broken. It's not working. But they philosophically believe that they'd like an attorney to come with them to try and iron things out. And so is such a situation when I attend a meeting, I'm attending with the goal to explore collaboration can be found.

[94:51] I would say this. This is maybe unique to my style, but I do believe that at all times anyone who comes with you to a meeting should be prepared to intelligently and collaboratively discuss the child's needs.

[95:05] The moment someone comes in and begins insulting the educators or creating an adversarial environment, I think the only one who suffers in such a situation is the children. I think the folks have to govern themselves professionally and with courtesy.

[95:26] The third matter and this is sort of the one that's more traditionally legal and that is there has been a break down in the relationship of the school district and the parent seeing eye to eye. Perhaps the district is engaging in some really inappropriate conduct or behavior. Well then the representation is really a due process case.

[95:46] You can even handle due process collaboratively, which is many times if you can present a case that is founded on what the law says then an accurate analysis of the fact. Then in many cases the school district can look at a situation and realize it's not about you criticizing them but rather about you fighting for the basic needs of your child in order to make sure he or she is making progress and I don't think anyone will fault a parent for standing for their child in that way.

[96:17] The law was created to have a dispute resolution mechanism of due process. So the very notion was we understood there might be times and situations where you just can't see eye to eye and I find sometimes by getting involved in such a case, I can set a better course for the future because once everyone understands that the parents have rights and that they need them enforced.

[96:43] Many times I find that the school district will adjust its behavior to begin to comply with the law and frankly begin to enjoy many of the benefits that come with that including progress for the child.

Ernest: [96:57] OK. Very good. Man oh man. This is really getting good here. A lot of questions still. This one I thought probably happens to a lot of people. Her name is Carla and she is from Huntington, West Virginia. Her question is, "If your child has an IEP in one state and you move to another, will the IEP still be effective? Does the new state have to implement the IEP until the next IEP meeting due date?"

Mark: [97:31] All of that question is correct with the exception of the very last part. When you have an IEP in place and you move to a new state. There is actually two sets of rules. One is when you move from one district within the same state versus when you move from state to state. The difference between inter-district transfer and inter-state transfer.

[97:56] The law says the new school district has to provide like services and like interventions until such a time as an IEP meeting can be held to devise a new program, and I often tell parents and this is something I use to make sure that school districts really do truly reflect what the child is receiving in the IEP document.

[98:19] That is, OK, they told you they have this really great class and we'd really like you to enroll in it and we think we can serve your child's needs and you say, "Well I'd like to write these supports and services in." And they say, "You don't need to do that because the class already does those things."

[98:35] My response to that is, "Well, I understand that this fine school district does things this way. But what happens if I end up moving to a new state? How will I have the new state understand what was going on so well here?"

[98:49] So I always ask parents to write with some degree of specificity the child's program. Even if it involves things that are already present in the classroom. We call this the portability of the IEP document, and that is, if you do find yourself moving from state to state or district to district, you want to capture as accurately as you can your child's program and interventions.

[99:14] I find this a lot with military families. Families that by definition are in transition and frankly, we found this in the aftermath of Hurricane Katrina. I picked up a tremendous amount of children who had come from New Orleans and Louisiana that had suddenly required California IEP teams to implement their program.

[99:36] It was very hard to pick up and understand what was working well for a child in the another program when all the school district said was place them in our class, in this type of class. We needed to know more. We needed to know what kind of services the OT and speech and so forth.

[99:56] In that instance, many of the records were destroyed or the assessments were gone, and so we always want to make sure that our IEP is reflective of what the program really is and use that as a basis to have the school district really spell it out; how they are going to help your child. The law says you are entitled to know what the program is going to be composed of and the levels of service.

[100:18] While I'm on that topic, I want to talk about a related point there.

Ernest: [100:22] OK.

Mark: [100:23] Many parents will come to a workshop or come to my office and they'll say, "Mark, I'm really happy. We have speech two times a week." And then I'll ask a couple questions. First question will be, "What kind of speech? Is it individual versus group?" and they'll say, "Oh well, I don't know." Or, "It's a group." I'll say, "How many children are in the group?" and they may or may not know that. And then I'll ask, "Where are the speech services devised or delivered?" They'll say, "We do that in the clinic." OK,

"So how long is the session?"

[100:54] Well, the session let's say, is 20 minutes and let's say that there's four children in the group. Let's say the classroom is four minutes walking distance from the speech and language clinic. So that means just for transition time you are talking about eight minutes off of a 20 minute session to immediately go just towards walking.

[101:14] Then, you have to be aware of the children who are in the group. Let's say that one or two of the children in the group are exhibiting behavior challenges that cause their transition to be delayed or difficult. It can very well be that by the time the child actually gets to the groups session, he or she is only getting one to two total minutes of intervention.

[101:33] So I would say while it's great to know that you are getting speech twice a week, if it is really only two minutes twice a week that is really not going to be adequate to meet the child's unique needs.

[101:44] The other thing that I want you to be aware of is things that happen in the educational context. Number one; most of the time when educators are in IEP meetings, they are not providing service. School districts do not maintain a deep bench of therapists waiting the moment that your therapist pulled into an IEP. So you have to understand that when all those IEP meetings are being held, chances are that those services for that day are not happening.

[102:08] The other thing you need to understand is that time is part of the educators process which is whether they are collaborating with you, collaborating with other members of the team, they are doing report writing; all those things should be included in your IEP offer because I want to make sure that that speech pathologist that wants to serve my child is being given sufficient time in his or her school workday to be able to do it.

[102:34] What we are finding, at least here in California and I know this is a problem nationwide is that as less and less of these professionals are available to serve the burgeoning needs of our community, they are getting 80-90 children to their caseload.

[102:49] So basically they have the challenge of sleep or serve the children. At some point they just reach the breaking point. You can often help them by specifying the necessary job components in your IEP. I present it that way to the therapists I talk to. We're doing this to help you. Also, to help our child.

Ernest: [103:13] Right, right. I'm glad you mentioned this whole issues of help, especially with therapy, because there one question here from Debbie from Lubbington, Pennsylvania. Her question is, "How do I get the school district to add independent evaluations, recommendations done by OT, PT, and speech therapists into the IEP? I think you kind of touched on this before.

Mark: [103:40] The law has said that the districts have to consider their

recommendations. You know what I often find is, "Oh, we consider them." Yet when you look at the IEP document there is no real notation of that consideration. The case law seems to be indicating that school districts have a duty to consider and document that consideration.

[104:06] One of the tricks I do for families who are feeling like they're presenting the assessments and so forth, and don't feel the district's really giving them fair weight, is I encourage them to draft a parent's attachment. With that is, basically, at the conclusion of the IEP meeting - once you have the notes and the documents read and everything, and you find maybe it doesn't accurately reflect everything that was said - parents are allowed (and, frankly, I encourage them) to draft their version of the meeting.

[104:36] In other words, this is the parent's statement, "We believe this represents our version of the meeting, and how it occurred." Therein, you include copies of the reports that you want added to the child's file. You would also break down the recommendations of the private therapists, in terms of what they're recommending. Then, you ask that that document be attached to the child's IEP. So once that happens, it becomes part of the child's educational record.

[105:06] And frankly if the school district is attempting to prove it's giving the parent equal voice, the first thing I think a reasonable hearing officer might say is, "Well, the parent's saying you're not really considering the independent assessors. They gave this parent attachment. How did you respond when you said no? Did you do it in writing? Did you provide them with all the assessments you relied upon? Did you give them a copy of their parents' rights? Did you offer them another IEP meeting, theoretically to make sure those concerns were addressed?"

[105:36] Often times I use that lack of response from the district to drive the argument that they really, truly haven't considered what the outside experts were saying.

Ernest: [105:46] Right. Man fantastic. People here really would love to have you at their IEP meetings. Those are the comments I'm getting here as well. I've got a quick question...

Mark: [105:59] One...

Ernest: [106:00] Go ahead.

Mark: [106:01] One thing I want to say, and I know it is possible that there are educators listening as well...

Ernest: [106:09] Sure.

Mark: [106:10] I really hope, and I'd be interested even if the comments aren't read over the air tonight, I'd really be interested in your comments in terms of whether you feel I'm being fair. At all times, I try to govern the practice of law in this field to be sensitive to the needs of all involved. I find that if you can state the law for what it is, many times that's the way that disputes can be solved.

[106:38] Frankly, school districts can prove an offering of faith by showing progress on the goals. And I think at the end of the day, granted, there are always some educators and there are always some parents that no matter what happens, you can't work with those folks, right? But I think that if you can show parents that progress is there, that it's really truly there, I think most parents will be your biggest fan.

Ernest: [107:08] Right.

Mark: [107:08] So I hope educators listening tonight understand that what I'm trying to say, is the law works for all of us. I hope I'm being fair in the way I'm depicting schools. So...

Ernest: [107:24] That's good, because there probably are a few educators on the line. I know a lot of people have had a lot of run-ins with staff before. And as a matter of fact, I've got this one question here from Jane. She asks, "What should a parent do if the school personnel insults and bullies the parent?"

[107:46] I don't know if that's ever happened in an IEP meeting before, but kind of what to do with...

Mark: [107:53] I've heard of this before. Sometimes it's subtle, and sometimes it's not so subtle. What I'd recommend is you make arrangements to tape the IEP.

[108:06] The federal law allows you to do so. Now this is the point I'm not sure about whether it's a California rule or federal rule, but here in California we have to give 24 hours notice of our intent to tape. Basically, then you can bring in a tape recorder in. They actually...

Ernest: [108:25] Oh.

Mark: [108:26] The problem is sometimes it has a chilling effect. In other words, people - when they're on tape - they don't necessarily want to say all that they would normally say.

Ernest: [108:36] Right.

Mark: [108:36] If you really feel there's a person in that room who's really treating you unfairly, and you're frustrated with that, getting a tape can be very helpful because it provides a method to monitor the nature of the meeting.

[108:53] Many times, the alienation of the parent can serve as a denial of faith. If the parent is being silenced or marginalized, you can argue that actually denies the procedural rules of fair participation, and substantive rules in terms of not getting to the core of what the child truly needs because you wouldn't listen to what the parent had to say.

Ernest: [109:16] I've got another question here. Great answer. Her name is Johnnie, and

she's from Concordia, Kansas. She asks, "What advice can you give us so we can request that our six-year-old be allowed to have her service dog through her IEP?"

[109:33] Have you heard of this before?

Mark: [109:35] Actually, that's an interesting point. We've actually been looking into this issue. A service dog is an aid, support or service necessary for the child to access his or her education. If the dog is truly a service dog, then the dog's received direct training. You can't just bring a family dog into the classroom for obvious health reasons.

Ernest: [110:05] Right.

Mark: [110:08] For the same reasons a bank can't tell a service dog it can't come in, same for the school district. I would say have the agency that trained the dog be prepared to certify that training. I would make sure to have the dog present during assessments, so the evaluators can see the role the dog plays in the child's accessing of his or her education.

[110:36] I think the district is going to have a heck of a time making an argument that the dog should be disallowed. Usually I can imagine the argument would be "it's distracting to the other students" or "Well, you know, service dogs are distracting to the community as a whole," but the fact is that their service is part of the child.

[110:54] The fact is that the dog serves a vital role for the student, well in the same way as if the student required medication. If the student required medication to access their education, you wouldn't say "Well, you can't have medication" or "You can't have [indecipherable] for service."

Ernest: [111:09] Very good. That's a great argument, actually, to have for something like that. Medicine, and whatever helps that child get through the day and be successful.

[111:22] Let's see here, let me go to... So many questions, so many choices. We're up to 140 right now. Clearly, we're not going to get through many of these, or the whole thing, but I have one question here. It's, "Can a parent observe during a pullout session, or is that breaching HIPA for other children? Let's say, during speech therapy."

[111:47] Maybe you can explain the question perhaps to everyone, too?

Mark: [111:51] I think the issue coming up here is many school districts will say a parent can't observe components of a child's educational day because that violates the privacy rights of the other students with IEPs. Yet, what happens here, really, is the parent is denied access, especially when the services are being conducted in a clinic where you can't have easy observation.

[112:22] I would say there are logical ways to deal with this. You could arrange with the speech pathologist to either have an individual session, or to have a group session in a public place where anyone could observe. That's one way to do it.

[112:42] If the district is absolutely adamant about not letting the parents have access, then you may want to consider retaining an outside expert to come in and observe the session.

[112:58] The argument tends to be made that the outside therapist would be violating the privacy rights. Because they're sworn to certain professional conduct standards, which is they can't disclose the identity of students receiving services and so forth.

[113:12] If you want to take this argument to its extreme extrapolation, one couldn't go to a hospital because theoretically you could see other patients who are receiving service there. It can become absurd.

[113:27] In California, we have a case that said where the school district is observing a child for educational planning purposes, the parents have the right to have the independent expert have at least as much exposure to the child and the educational setting. And that case is called "Benjamin G." And it comes out of Orange County, California.

Ernest: [113:50] OK. Well, let's see here. We've got a couple of more questions here. Let's see here. I have one that this person here asked, "Can an IEP be adjusted periodically as the child's needs may change?"

Mark: [114:11] Yes. The law actually contemplates that, allowing assessment. You can have total assessment at least one a year. It used to be whenever requested. So many people think they have to wait for a tri-annual or a three-year review to have a thorough assessment. And the law says you can actually have an assessment at least once a year if you request it.

[114:39] IEPs can be convened and should be convened when something changes in the child's program, both for termination of services or an adjustment of services, as well as on parent requests with 30 days notice. Certain rules apply. I mean the 30 days is not a standard rule you can completely rely on.

[114:59] There are exceptions to it. For instance, here in California, IEP requests that are made by parents during summer sessions or breaks longer than five days. Well, you're not going to be able to get an IEP held during that hike in summer.

[115:14] But there are rules in terms of upon return to school, how soon they have to convene IEP. And that's something that basically is adjusted on a state-by-state basis. But you can virtually request an IEP at any time that you believe one is needed to adjust a program.

Ernest: [115:31] OK. We've got probably room for maybe one more question, maybe two more, because we're coming to the end of the call. But let's see. This question is from Ann from Pennsylvania, "Do have any advice for a child that attends private school? My son currently attends a Christian school. I'm having difficulties in getting the school to

discuss an IEP meeting."

Mark: [115:54] The reason that Ann is having trouble with getting an IEP is because the parent has placed the child privately outside of the recommendations of the IEP. So under such circumstances, here in California, our plans are called Individualized Services Plans. They're not IEPs, in that they don't come with the same requirements with the state and so forth.

[116:21] But they do allow privately placed kids to receive services and support from the school district on a pro-rata basis, meaning you take a percentage of the school district's budget, and you allocated it to the private school children's use. And then it's available on a first-come, first-serve basis to the parents who have placed privately.

[116:44] Now, this varies slightly from a concept where the school district and the parents agree together that a private placement is necessary for the child to make educational progress.

[116:56] For instance, if the school district had elected to place that child at that private Christian school, then they would be obligated to provide all supports and services necessary for the child to reach or receive an educational benefit under an IEP.

[117:12] With respect to private institutions, many times we have requirements that our kids have certain supports and services and accommodations and so forth. The private schools actually have another duty that exists under law.

[117:29] Any time you can be shown that a private school receives Federal funding in any form, they have a duty to observe 504 protections under Section 504 of the Rehabilitation Act of 1973, which says that they have to remove all obstacles for the child that prevents the child from accessing his or her education.

[117:50] So what I guess I'm proposing here is that there's two ways to really look at this. The general rule is that protects Americans with disabilities apply to private and sector agencies. And also, that there's two ways that a child can be placed privately through the IEP process or through parent election.

[118:12] And sometimes parents look at it, and they say, "Well, you know we need a learning environment that's smaller, that's more tailored and more centered around the child's unique needs." Perhaps the other children there are part of a faith-based community that provides social opportunities for you in your church and at temple, or what have you.

[118:33] And so there may be reason you select it. But understand that certain requirements in terms of church/state crossover actually could prevent school districts from funding religious education. And in such situations, I found that what I do is I try to figure out the percentage of the school day that's dedicated to religious training and make that allocated to the parents. And then the part of the day that's allocated to educational training, well, I ask the school district for support in that.

[119:01] So there are ways to look at this. Many, many ways to look at that problem and come up with an understanding with your school district.

Ernest: [119:11] Very good. Mark, all I can say is, "Wow." That's what everyone is saying here. "This guy's great." "We need another Q&A session with him."

[119:24] We'd love you to come back soon. Whenever you can, because there's just so much need out there. We have about 300 people on the call. And it's just amazing here. I just want to say thank you so much.

[119:39] For everyone who doesn't know what's going on here, Mark did this entire interview, I believe, in your car. Is that correct?

Mark: [119:46] Yeah, I am sitting in my car.

Ernest: [119:50] He's in his car.

[119:51] [crosstalk]

Ernest: [119:53] He's using cell minutes to talk to us. And thank you so much, Mark. Thank you so much. We'd love to have you back again. And you've answered a lot of questions here. I tried to pick the best ones here. Would love to have you come back again. And I just want to say thank you so much for doing this.

[120:13] And to the people who are still on the call, while Mark goes, I just want you to do a big favor for me. Could you tell me what you thought about the call? I'd like to get those thoughts if you can verbally over the phone. I'll give you a number to call where you can kind of leave a message, a testimony (if you will), what you thought about the call.

[120:39] If you've got a pencil and paper, could you write this number down? It's 877-211-0212. That number again is 877-211-0212. And just hit extension one when the call picks up. You can leave a voicemail.

[121:00] Give me your name, your email address, and what you liked about the call, what you'd like to ask, what you'd like to have in the next call, and what things we could add to make this even better, and would you recommend this call to anybody else. I would really love to hear your reasons and your thoughts about this.

[121:20] This has been a great opportunity to have Mark on here. So I'd love to get your call. But if you can't do it by phone, there's a link at the bottom that say, "Give me your testimonial." If you refresh the screen there, you can see that. Click that. And then you can essentially get to the same screen where you can either give me a text message on what you thought or over the phone.

[121:43] So once again, thanks for a lot for attending everyone. This call ends tonight

here. And Mark, thanks so very much.

Mark: [121:51] It's my pleasure, and best of luck to all of you. I know that you've got a long road. And I don't have to tell you that the road has some challenges on it. But I think any parent who's walking this road understands that so much of the beauty on it is a pleasure that's uniquely ours. So keep your chin up. We're going to make it.

[122:17] And I hope this has helped you in some way. I think, to echo what Ernest has said, to the extent that if you have criticisms as well as comments, I'd love to hear those as well. I try to tailor talks and presentations to being responsive to those who listen to them. And I'm sure I could benefit from your suggestions. So thanks for your time as well. And good luck in this process.

Ernest: [122:47] All right, everyone. Good night.