

Child-First Practice When Serving Students with Disabilities in Educational Settings

Prepared by the 2007-8, 2008-9 and 2009-10 Massachusetts Special Education Advisory Councils

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Introduction

A range of stakeholders makes up the Massachusetts Special Education Advisory Council (SAC)¹, which is mandated by federal law. The SAC promotes open and frank discussion concerning statewide special education matters and advises the State Director of Special Education and the Massachusetts Board of Elementary and Secondary Education.

During the course of several SAC group discussions during FY 2007-08, concerns relative to ethical behavior in special education emerged as an area in need of further exploration. Based upon anecdotal information, Program Quality Assurance (PQA) data, and parental perspectives, it appeared that standards of child-first ethical behavior were being compromised in some special education situations.

One responsibility of the SAC is to inform the Board of Elementary and Secondary Education about conditions that affect special education service delivery. Consequently, the SAC charged a subcommittee to deliberate the aforementioned considerations. That subcommittee² met for approximately two years and prepared a draft of this document that was then discussed, amended, and approved by the entire SAC for presentation to the Commissioner and Board of Elementary and Secondary Education, and subsequently for the Massachusetts special education community. It is hoped that this work will improve awareness of ethical responsibilities in the professional practice of individuals and school districts, in order to improve services to students with disabilities.

Members of the SAC recognize that there is an important distinction between “logistical issues” and “ethical behaviors” that can affect service provision. This distinction will be discussed in greater detail in the following section of this document, but it should be noted here that the intent of this paper is to encourage “child-first” ethical behavior on the part of those who serve students with disabilities. Other factors that may impact the provision of services, such as unfunded mandates, poor funding mechanisms, and insufficient infrastructure to share best practices are not discussed. However, the SAC recognizes that these conditions exist, and that they must be considered in the larger discussion regarding conditions that impact services for students with disabilities. This document should serve as a

¹ Membership includes parents, special education administrators, advocates, higher education representatives, and personnel from numerous state agencies affiliated with special education services.

² Subcommittee members were Alec Peck (Chair), Carla Jentz, Jennie Dunkley, and Louis Abbate.

teaching and discussion tool to enhance outcomes for students with disabilities in connection with the Free, Appropriate Public Education (FAPE) standard of services.

The intent of this paper is not to judge or bring attention to any one specific person, school district, or private program, nor to prompt a compliance inquiry for any of the above. This paper is meant solely as an educational tool to support all individuals involved in decision making and supporting students with disabilities. It fulfills an “advisory” responsibility by members of the Massachusetts Special Education Advisory Council.

Child-First Ethic

Members of the SAC subscribe to the ethical premise that, in keeping with the concept of FAPE, the needs of each child should always be the primary consideration whenever special education service issues are considered. This is an important stance. It means that special educators recognize the right of every child on an IEP to be educated in a manner that is most likely to assist that child to meet the same standards as non-disabled peers, to have equal access to the curriculum and to the life of the school, and to be treated with equal respect.

Logistics Versus Ethics

No one can control or establish contingencies for all unexpected challenges. Hence, for the purposes of this discussion, we differentiate between issues of “logistics” and “ethics.”

Logistical issues are challenges that should typically be responded to effectively and expediently. These include onsite complications that deter immediate compliance with special education requirements, such as unexpected teacher resignations. Logistical challenges can result in temporary delays in supports, services, or compliance. Although these are not to be condoned, they are confounding variables which need separate remedial attention.

Ethical issues are actions, responses, or a lack of responses that are grounded in practice that would be commonly viewed as either ethical or unethical. Ethical behavior requires adherence to laws and regulations, and ethical behavior complies with fundamental moral principles, many of which have been

codified by nationally recognized professional groups.³ In special education, the child-first ethic should drive decision making.

Unethical behavior can be intentional or unintentional. It can be performed by individual(s) or it can be systemic and cultural. We recognize that numerous factors may motivate unethical behavior, and that tacit rationalizations for these behaviors may include misinformation, lack of experience or lack of specialized personnel, overburdened personnel, insufficient resources, efficiency and expediency. Of course, as unethical behaviors, none of these are justifiable and none are acceptable. The failure to correct a logistical problem is itself, unethical.

The recognition of local unethical behavior may signify a need for a shift in style, practice, process, and/or culture within a school district. An intent of this paper is to engender discussion of unethical practices and processes that may have inadvertently become commonplace in local practice.

Recommendations for Use of this Document

The authors recognize that there is no “moral calculus for solving ethical dilemmas...” where all that is needed is a “...right formula, and all of our problems can be resolved.”⁴ Ethical practice is based in moral values, and there are unique features in the moral development of each of us. Nevertheless, special educators do share some common values, and we recognize “...an ethical imperative... that we must both do good and do good well.”⁵

The purpose of this document is to raise awareness of situations which may place practitioners in ethical dilemmas. It also reminds practitioners of their responsibility to always act in a manner consistent with the best interests of the individual students in their charge.

³ Professional groups include the Council for Exceptional Children (CEC), the National Association of School Psychologists (NASP), the American Speech and Hearing Association (ASHA) and the National Association of State Directors of Special Education (NASDSE).

⁴ Fasching, D. (1997). Beyond values: Story, character, and public policy in American schools. In J. Paul et. al.. *Ethics and decision making in local schools: Inclusion, policy and reform*. Baltimore: Paul Brookes.

⁵ Berkeley, T. & Ludlow, B. (2008) Ethical dilemmas in rural special education: a call for conversation about the ethics of practice. *Rural Special Education Quarterly* 27(1/2), 3-9.

There are at least three ways in which this document can be used: self-reflection, group-reflection, and as a theme for workshops.

- *Self-reflection* – Many of the following examples highlight situations in which individuals must make ethical choices. Working privately, individuals can reflect on these examples and compare them to their own practice. If one holds competing values (e.g., conflicts over time spent outside a normalizing classroom for important therapy), reflecting on these cases may stimulate conversations that could help resolve or at least diminish such conflict.

- *Group reflection* – Small groups may want to consider the example situations in this document and compare them to situations that have occurred in their own building. This may highlight differences in moral perspectives on practice and increase respect for the child-first ethic, for other professionals, and for the diverse students who are served.

- *Workshops* – Since ethical dilemmas are sometimes difficult to recognize, workshops or inservice sessions can be used to highlight the moral dimensions of decisions and to discuss ethical practice. The SAC sincerely hopes that this document will stimulate important conversations among the various professionals who serve students with special needs. We agree with Berkeley and Ludlow (2008) who succinctly stated:

To us, ethics, given the ideals and the vast range of values we cherish and try to understand and use in our daily lives, should be part of a lifelong self-examination and re-examination or reflection, as well as part of a regular effort of continuing conversation and training in our professional lives.

Cases for Consideration

The following situations present logistical and/or ethical issues to be considered. We analyze the first 3 cases as examples of the process of child-first ethical reasoning. We then present additional cases for use by individuals and/or school districts in local discussions.

George

An IEP has been prepared for George, a sophomore at the XYZ high school who is in a full inclusion program. The IEP calls for a number of accommodations in testing and instruction. The IEP Team chairperson has placed a copy of the IEP in the mailbox of each of George's teachers. At the annual review, the Team discovers that many of the accommodations have not been implemented. Where may the child-first ethic have been compromised?

There are a number of issues here:

First, the special education teacher or IEP Team chairperson did not explain the IEP to the general education teachers. From a logistical perspective, this may have been due to an excessive case load. This would not excuse the special education teacher or IEP Team chairperson from having explained the IEP, but it may mean that the district has been unrealistic in its expectations for case loads. On the other hand, this could be an ethical issue. The special educator or IEP Team chairperson may have ignored the need for explanations due to interpersonal or "turf" conflicts with the general education teachers.

Second, the classroom teachers apparently failed to read the IEP and ask appropriate questions, or just ignored the IEP, or took the position "the same rules apply to all students in my class." Logistically, this could reflect a lack of training for teachers within the district. Ethically, it could mean that some teachers deliberately ignored their legal and ethical requirement to comply with the IEP.

Third, there was a failure by special education staff to monitor the IEP other than on an annual basis. Unrealistically high case loads may have logistically prevented the staff from regular monitoring, but a personal decision to "...not interfere with the classroom teachers' practices" would be unethical behavior on the part of the special educator.

Finally, there may be a school culture that discourages or inhibits cooperation between special and general education staff. Logistically, this reflects a lack of leadership that would set directions for all teachers.

Boris

The XYZ district has a discipline policy which allows principals to remove students from classes and place them in their office for the remainder of a day. Boris is a student who has been sent to the principal's office for inappropriate in-class behaviors for more than one-half day each time, for eight days in the past month. His IEP identifies him as having emotional and behavioral disorders. Ethically, are these in-house suspensions OK? Can the district defend this policy? What are the child-first considerations?

First, was Boris just sitting in the principal's office, not receiving any instruction from a qualified teacher? Given the frequency of his in-house suspensions, this would violate his right to FAPE in the Least Restrictive Environment (LRE).

Second, it appears that a behavior plan addressing his "inappropriate in-class behaviors" has either not been written, is inadequate to meet his needs, or is not being appropriately implemented. Lack of attention to a behavior plan for this student who is identified as having an emotional / behavioral disorder fails to provide FAPE in the LRE.

Third, does the school report these suspensions to the parent or the state? If not, is anyone taking responsibility for Boris' lack of access to the general curriculum and/or IEP services occurring far too often for Boris? Also, the district policy may need to be examined for compliance with Commonwealth regulations on suspension and expulsion.

Bella

Five days before the end of a school year, the IEP Team chair receives an outside evaluation of Bella, a 3rd grader on an IEP based on visual impairment. The evaluation report identifies a previously undiagnosed moderate to severe hearing loss. Given this new information, the parents have requested that the child's proposed 4th grade program be re-evaluated. Because it is the end of the academic year, the Team chair decides to place the folder aside and address it in September. What are the child-first issues to be considered?

The severity of this low incidence case is important to consider. It will require additional Team members with knowledge of hearing loss. It may require changes to the acoustic properties of the classroom and acquisition of equipment.

There are logistical considerations in this case, including the fact that gathering IEP Teams near the end of a school year is very difficult. Introducing new members to the IEP Team at this point in time is also

awkward. Nevertheless, this diagnosis may imply a need for a very different classroom environment at the start of the next academic year.

There are parent partnership considerations in not responding to a parental request for reconsideration and possibly causing an alienation from the school on the part of the parent by simply not responding (whether or not the request for reconsideration comes within the regulatory period of time before the end of the school year).

Ethically, scheduling the meeting in September is not the problem, but waiting until the new academic year with no further consideration before then is problematic. Consents for evaluation, a classroom environmental assessment, a need to purchase other equipment, and reconsideration of the existing IEP should all take place either in the remaining time in the current school year or over the summer. Waiting until September to begin addressing these issues may mean that needed program changes would be postponed for months.

Additional Cases

The following cases are presented for consideration by individuals in school districts faced with similar dilemmas. While there is rarely a single solution to a logistical or ethical problem, it is hoped that the child-first analysis helped to suggest resolutions in the previous cases and a similar child-first practice will provide guidance to the resolution of the following cases. In considering options, it is important to keep in mind special education and other laws and regulations that may pertain to the situations.

Tony

Tony is an 11th grader who has motor problems that prevent him from taking adequate notes in class. His 504 accommodation plan includes access to a computer in all academic classes. The technology budget for the district has been exhausted and the new budget does not have money for new computers. Tony's History teacher does not have a computer in his classroom, and decides that he will simply assign a classmate to provide "buddy notes."

What are the logistical issues and what are the ethical issues in this case?

Rochelle

Rochelle is a 7th grader in the XYZ middle school. Her IEP was developed during the past year. The district policy is to keep IEPs under lock and key in the main office for "privacy reasons." As a result, only one of Rochelle's teachers has seen the IEP. Others have been told to accommodate Rochelle by

giving her additional time on tests and to accept fewer homework problems (e.g., five out of ten mathematics problems).

What are the logistical issues and what are the ethical issues in this case?

Patrick

Patrick is a 4th grade student with motor dyspraxia that precludes the use of spoken language. His expressive language is exclusively through sign language. Previously, he lived in another state where he was in a total communication program. The parents now request an out- of-district placement or placement in a collaborative program that uses a total communication approach. Citing LRE requirements, other Team members believe that an appropriate inclusion program could be accomplished if an interpreter were present.

What are the logistical issues and what are the ethical issues in this case?

Margarita

Margarita is a 2 year 11 month old diagnosed with PDD-NOS. She has been receiving a total of 15 hours per week in combined home-based services for 6 months. The XYZ school district has proposed a half-day pre-school program to provide ABA, Speech & Language and Occupational Therapy services. Margarita's father has declined services and informed the district that his daughter is too young to go to school and will be staying at home with her siblings and mother.

What are the logistical issues and what are the ethical issues in this case?

Maria

Maria is a 9th grade student at XYZ High School, who is visually impaired. Since her family moved into the XYZ school district a year ago, Maria has received the services of a teacher of the visually impaired, an orientation and mobility specialist, and a Braille aide. Maria has now attended three schools in two years. Shortly after moving to the XYZ school district, Maria's family was evicted from their apartment. After the eviction, Maria and her family moved in with her grandmother who lives in ABCville, some 25 miles away from the XYZ school district. The ABCville school district informed Maria's mother that because the family was homeless, Maria could continue to attend the XYZ Schools.

What are the child-first ethical issues in this case?