



Future Reflections

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When Is It Time to Seek Counsel?

An Interview with Sharon Krevor-Weisbaum, Esq.

From the Editor: When parents feel that they have reached an impasse with their child's school district, legal counsel may be their best option. In this interview Sharon Krevor-Weisbaum, managing partner of Baltimore law firm Brown, Goldstein & Levy, discusses how parents can work with special education lawyers to achieve a positive outcome.



DEBORAH KENT STEIN (DKS): As an attorney, how long have you been involved in cases involving blind students? Have you noticed any changes in the kinds of cases that come to you over the years?

SHARON KREVOR-WEISBAUM (SK-W): I started working on cases involving blind students in the early 2000s. My sense is that over the past five years, the barriers for blind students have changed, perhaps even increased, given the proliferation of technology in the classroom, whether for homework assignments, testing, or for in-class online collaboration. Of course, we continue to experience school districts that are resistant to providing the level of Braille instruction that students need; resistant to providing orientation and mobility that ensures significant community integration; and resistant to ensuring that blind students receive timely, accessible materials, which of course makes equal access difficult, if not impossible. Many times the key is a strong Teacher of Students with Visual Impairments (TVI) who understands that blind students can progress at the same level as their peers as long as they are provided with the right skills and equal access. Although it is not entirely different at the college level, there has been more litigation and more publicity regarding the legal obligations on institutions of

higher education, which has prompted more progress than we've seen at the K-12 level.

DKS: When things aren't going well, at what point should parents bring in a lawyer?

SK-W: When parents contact me, I usually start by asking some basic questions. I'll ask them, "Have you let the school know that you are unhappy? Do you feel that you are being heard? Have you documented your concerns? Have you brought a blind adult to the IEP meeting to talk about the importance of Braille and technology?" The answers to these questions give me a sense of what is going on, how far things have gone, and where the process needs to go. Sometimes parents have been to one Individualized Education Plan (IEP) meeting after another, and nothing is getting done. One parent I worked with fought for three years to get Braille instruction for her son before a lawyer got involved. If the parents believe they are not being heard and that their child is losing ground, then it is time to bring a lawyer onboard.

DKS: Are there times when you feel parents turn to a lawyer too hastily?

SK-W: At times parents call for legal assistance before they bring in an advocate such as someone from the NFB. I recommend that parents take an advocate with them when they go to these meetings. Things tend to go more smoothly when an advocate is present. If parents talk about going to due process right from the start, though, the school is likely to get on the defensive, and communications can break down very quickly.

DKS: How can parents find a lawyer who knows about blindness?

SK-W: Most special education lawyers are quite familiar with disabilities such as dyslexia and autism, but often attorneys have not handled a case involving a blind child. This does not need to be a concern. Part of our job as lawyers is to educate ourselves, no matter what the case involves. A lawyer with experience in special education law can educate herself about Braille, mobility, and any other blindness need that pertains to a particular case. Interview several lawyers and look for someone who is open to talking with the NFB and with other parents of blind children. In my work, I do a lot of consulting with other lawyers. I can be a resource for lawyers who are unfamiliar with blindness cases. When a child has disabilities in addition to blindness, the lawyer needs to learn about the intersection of the different disabilities. If your attorney is willing to learn about blindness, he or she can be a great advocate.

DKS: How does the process work once a lawyer gets involved in a case?

SK-W: After meeting with the parents and the student, and reviewing the most recent IEP, a lawyer can attend the IEP meeting and help the parties communicate with each other. A good lawyer is a good communicator. In a lot of instances just having a lawyer at the table will turn things around. If the problem cannot be resolved at the table, the attorney will discuss the options that are available to the parents.

DKS: Can you say a bit more about that?

SK-W: One option is to file a due process complaint; another may be to file a complaint with the State's Department of Education. There may be options outside of the Individuals with Disabilities Education Act (IDEA) which an attorney might consider, such as the ADA and Section 504 of the Rehabilitation Act. If the family decides to file a due process complaint, the family can bring experts and witnesses to the hearing. A due process hearing can stretch out over a long period of time. The court may say it will take eight days, but those days can be spread out over several months. Due process is very adversarial and stressful; it is also a very expensive process. If the parents prevail, however, they can recover a portion of their costs. If problems can be resolved at an IEP meeting, it is a lot less stressful and a lot less expensive.

DKS: With all the down sides, have you seen situations when due process is beneficial to the family and the student?

SK-W: Absolutely. There are times when the pressure of litigation is the only way things will change. For instance, if a student who needs Braille instruction cannot obtain this needed service at the IEP table, I would of course encourage a family to go to hearing.

DKS: Recently the Supreme Court handed down a ruling on a disability case in Michigan. What impact do you think that ruling will have on disability cases going forward?

SK-W: The case involved a child with cerebral palsy who used a service dog. The school refused to allow her to have the dog with her in the classroom. The family brought suit against the district under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. The issue before the Supreme Court was whether administrative exhaustion under the IDEA is required before bringing such claims of discrimination to the federal court. The Supreme Court held that exhaustion under the IDEA is required when the remedy sought in the complaint is a denial of a Free and Appropriate Education (FAPE), but not if what is sought is something different such as equal access and equal opportunity. Although this type of analysis will be very case specific, we believe that the Supreme Court's decision will open up direct avenues to the federal district court under the ADA and Section 504 where what is being sought is access to

equal educational opportunities. Another very important recent ruling from the Supreme Court will be helpful in ensuring that districts have higher expectations for our blind children. The Supreme Court recently rejected the “barely more than de minimus progress” standard that some lower courts had deemed sufficient to meet the FAPE standard. The Court held that a child’s educational program must be appropriately ambitious in light of his or her circumstances, and that every child should have the chance to meet challenging objectives.

DKS: A lot of kids who have disabilities in addition to blindness tend to fall through the cracks. How can parents make sure these kids get the education they deserve?

SK-W: When a blind child also has other disabilities, he or she often gets placed in a class for children with severe disabilities, and blindness skills training is often ignored. A failure to address the child’s blindness obviously exacerbates the gap in learning. Parents must be sure that school districts are focusing on all of the child’s needs, and they may have to request an Independent Educational Evaluation if the parents’ concerns are not being addressed.

DKS: Is there anything else you'd like parents to know?

SK-W: I recommend that parents review two guidance documents issued by the United States Department of Education and the United States Department of Justice, and I suggest that parents’ attorneys review them as well.

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>; <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/brailledcl-6-19-13.pdf>

DKS: Thank you so much for your time! This is great information, and I’m sure a lot of parents will find it very helpful.