

Lynne Rachlis interviewed by Denise Egan Stack, LMHC

A child's emotional and behavioral problems often times interfere with their learning and/or school performance. In these cases, clinicians work with parents and school personnel to develop a plan to help remediate the problem. For parents, learning about and understanding children's rights in the school system and options for help can be overwhelming. Parents have many questions, such as: How do I determine if my child's struggle requires intervention? Where do I start? Is the school on my side? How will my child get help? In an effort to de-mystify the topic, Denise Egan Stack interviewed Lynne Rachlis, a Boston area child advocate specializing in providing help for children and adolescents with psychiatric disabilities. In this interview, Ms. Rachlis answers all of these questions and more.

What is your background and how did you get into school advocacy?

Because this is not a credentialed profession, we all come to advocacy from idiosyncratic backgrounds. My path to advocacy was a bit circuitous. I put myself through college (which took ten years) as a family law paralegal, so I have been comfortable thinking about things through the legal lens since I was 18. I studied English in college and got a teaching certificate so my path into education was pretty straightforward. I taught secondary school English for about 3 years in various schools getting laid off from each one at the end of the year because of budget cuts related to the passing of Proposition 2 1/2 in 1980. I spent a about a year as a Victim Witness Advocate in the Framingham District Court and subsequently worked for the now defunct state agency Office for Children as the Child Advocate/Coordinator covering the South Shore for the duration of the 1980's. When OFC was being dismantled, I was laid off yet again, and went to work at Westwood Lodge Hospital as the After-Care Coordinator for the child and adolescent population (effectively the in house Child Advocate) for most of the 1990's. My work at Westwood Lodge was an invaluable "graduate degree" in clinical assessment and discharge planning including a window into the world of negotiations with insurance companies. When managed care kicked in, I was laid off again and went into private advocacy around 1998. Hence, the focus of my practice in advocacy for children and adolescents with psychiatric disabilities and histories of hospitalizations (or risk of hospitalization).

What exactly does a school advocate do?

Every advocate approaches the work differently and has their own area of specialization, based on their background and areas of expertise. Some advocates are also lawyers; some advocates are also evaluators; some are parents of children with special needs and others are former educators or administrators. I see my role as building bridges of communication on behalf of students who struggle with severe psychological distress, a category of disability which is not a school district's area of expertise. I help parents engage in productive dialogue with school staff (as well as other agencies) using the documentation and experts involved in their child's treatment as a "launching pad." My familiarity with the clinical, educational, and regulatory worlds which informs these negotiations enables me to help parents make informed decisions about getting their children the services they need. I strive to make this a speedy and stress-free process for parent's already worried sick about their child, but it is rarely either. If nothing else, I can help parents pick and choose their battles, process their options, and share their anxiety so that discussions with school and agency personnel is more predictable and productive.

What legal rights and protections does a child have in the educational setting?

Every student is entitled to a free appropriate public education. All states are governed by the federal Individuals with Disabilities in Education Act (IDEA) which establishes a baseline of procedures and protections. If a state's laws and regulations are more stringent, the state regulations prevail. This is the case in Massachusetts. The state Department of Elementary and Secondary Education website provides information for parents about the special education process, regulations, and policies with which school districts must comply. The Federation for Children with Special Needs and the Special Needs Advocacy Network offer information and training for parents and advocates alike.

Are these the same for public and private schools? If not, how do they differ?

Schools which accept public funding are bound by the IDEA requirements. This includes Charter Schools, Vocational-Technical Schools, and special education schools which accept special education students for placements funded by their public school districts. It does not apply to private schools which generally do not accept publicly-funded students.

Are there recent changes that have been made that would be important for parents to know about (or possible changes to come?)

There are developments in case law which impact the implementation of special education regulations with each decision of a judge or a hearing officer. For information about pending legislation or legal trends, the websites of Massachusetts Advocates for Children or the Federation for Children with Special Needs are great resources.

What are the warning signs that your child might need a special education plan?

My rule of thumb is that if a parent is worried about their child, they should consult with their child's doctor and teachers to determine whether a more thorough evaluation would be helpful. If a parent requests a special education evaluation, the school district is required to provide them with a Consent to Evaluate form. Once the consent form is signed, the district has 30 school days to conduct the evaluations in any and all areas of suspected need and to convene a Team meeting to determine eligibility. Within 45 school days of the signing of the consent form, the Team has to provide the parent either with an IEP or a Notice of Refusal to Act (i.e. denial of eligibility). Parents can then accept or reject (in whole or in part) the IEP as proposed. They can also reject the denial of eligibility. Upon receipt of a rejection of any sort, the district is required to notify the state within five days and parents can avail themselves of the Bureau of Special Education Appeals dispute resolution options and resources.

There are four criteria for special education eligibility. First, the student must have a disability which falls within one or more of the federally-established categories. Second, the student must be unable to make effective progress. Third, the lack of effective progress must be attributable to the disability. And fourth, the student must require specialized instruction to make effective progress OR related services to access the general curriculum. While this sounds straightforward, there are frequently occasions where there are disagreements about whether an individual student meets these criteria.

What options does a child have?

Districts are required to provide all students with a free and appropriate public education (FAPE). Students on IEPs are entitled to FAPE as well as whatever services they require to make "meaningful educational progress."

This does not mean that people of good faith and intelligence always agree about whether an individual child is receiving an appropriate education or making meaningful progress. The essential protection of special education law, however, is the entitlement to a dialogue. School districts cannot decline to communicate with parents and parents are entitled to participate in the decision-making process. However, all parties are free to disagree and to have their concerns heard in increasing formal forums offered by the state.

What is the difference between a 504 plan and an IEP?

A 504 Plan is a plan of accommodations provided to students under the Americans with Disabilities Act. An IEP is provided under IDEA for students whose needs cannot be met by accommodations alone and who require specialized instruction or related services. An IEP is substantially more protection for an individual student because under an IEP, the school district cannot unilaterally terminate services without notice or parental consent. In addition, under federal law pertaining to IEPs, if there is a dispute about the services in the IEP, the student "stays put" in the last agreed upon program and placement during the pendency of the dispute. These are invaluable protections which cannot be underestimated and which 504 Accommodation Plans do not carry.

How does advocacy re: emotional problems differ from advocacy re: learning problems?

In evaluating a student's special needs, a school district first assesses a student's academic skills including the ability to read, write and compute. These are areas in which the district has primary expertise and can legitimately diagnose a disability. Schools are not, however, able to diagnose mental illness. This is the express responsibility of clinicians with specialized training and credentials, experience and expertise. This makes advocacy for students with emotional problems considerably easier because the diagnosis of the problem and the expertise regarding interventions begins outside the school district's purview. It is rare that a school district disputes a psychiatrist's diagnosis. School districts are prohibited from opining regarding a student's medications.

Does a child need to have neuro psych testing in order to have an IEP?

School districts are required to conduct educational testing but not neuropsychological testing. Parents who wish to have more detailed assessments therefore seek independent assessments. For students with social/emotional disabilities, I believe that neuro-psychological testing with projectives is a valuable means of connecting all the dots between a student's neurology (brain wiring), psychology (emotions), and functionality (socially, emotionally and behaviorally as well as academically and cognitively in school and in the community).

Independent evaluations are not legally binding on school districts, but must be considered. Parents are well advised to select an evaluator who can participate as an expert witness should any dispute rise to the level of formal appeals. If the evaluator also available to attend Team meetings on the student's behalf and observe the student in school, they become an active and ongoing member of the Team, engaged and available to answer questions and offer informed opinions, which can meaningfully impact the outcome of discussions and potentially resolve disputes without need for formal appeals.

Are schools supportive of IEPs?

I believe that all educational professionals go into the field because they want to help educate children and positively influence their path towards adulthood. School districts do their utmost to support all students, including those on IEPs. Nonetheless, because school districts are charged with meeting the many and diverse needs of all their students and must comply with a multiplicity of state and federal mandates, they are often challenged to do so with limited resources.

How often do IEPs get updated? Do they transfer from one school to another?

School districts are required to review and update IEPs annually. They are required to evaluate a student's special education needs at least every three years. The IEP program and placement is portable within the state. If a student moves from one town to another, their IEP moves with them "as is." It remains fully in effect until a subsequent IEP is proposed and accepted by the parents.

What are some tips to facilitate a collaborative spirit between the parents and schools when negotiating accommodations for a child?

A sense of mutual respect and collaboration are essential when negotiating with school districts on behalf of vulnerable children. First and foremost, it is important to approach any disputes with civility and calm. Recommendations from outpatient clinicians and evaluators should be thoughtfully written and all documentation should be provided to the school district in advance of any meetings. Surprises should be avoided at Team meetings; agendas should be clarified in advance; conversations and meetings should be followed up with notes of appreciation. This is typically impossible for parents to accomplish alone because every conversation about the suffering of one's own child is painful and stressful, compromising any parent's ability to think clearly or objectively about what to say, how to say it, when to say something and when to remain silent. These are the instincts that a skilled advocate can bring to the process.

When do you call an advocate?

I think it can be helpful to parents to consult with an advocate or an advocacy agency like the Federation for Children with Special Needs from the outset if only to have an objective perspective on the journey they are about to embark on. This doesn't mean they need to hire someone. So much depends upon a parent's comfort level and financial resources.

Many parents want to have an advocate guiding them through the process from the beginning if only to feel confident that things are proceeding as they should, that the right questions are being asked, and that there is a sense of clarity and accountability at each step. Some parents are equally comfortable proceeding on their own until a clear problem arises and they feel out of their depth. It's hard enough just being the parent of a special needs child. Being both parent and advocate is a recipe for overload and reactive decision-making. It can be impossible for a parent to know what questions to ask or how to respond after something goes awry. It's harder still to see the harbingers of dispute lurking on the horizon with sufficient time to steer clear. Knowledge of the regulations, case law, policy and politics are only the beginning. When it's your own child, it is virtually impossible to separate emotion from reason in the heat of the moment.

How do you find an advocate?

Because advocacy is not a credentialed profession, parents are often faced with confusion when deciding who to hire. It is usually helpful to start by asking for recommendations from specialists (independent evaluators or clinicians) who know their child's needs. As in selecting an independent evaluator, it is wise to choose an advocate who is experienced in helping families whose children struggle with similar disabilities. It can be helpful to speak with two or three advocates to compare. I believe it is critical to choose someone with whom a parent feels "simpatico", someone you feel you can trust to give you honest, compassionate and thoughtful advice, even if its advice you'd rather not have to hear. Other resources for advocacy are the Special Needs Advocacy Network (SPAN) and the Federation for Children with Special Needs.

When do you consider an outside school placement?

The short answer is when a public school cannot meet the student's needs with in-house support services, that is the time to think about outside placements. However, because outside placements remove a student from their home school and are therefore more "restrictive" placements (as opposed to the "least restrictive environment" which is the school district's obligation to provide), as well as being costly, these decisions are approached with great care by school districts. Consultation with and testing (as well as a school-based observation) by an independent evaluator is often necessary to obtain the information needed to determine whether an outside placement is required. Again because even intelligent people of good will can hold opposing views, these decisions are not made lightly or quickly.

When do you call an attorney?

Attorneys specialize in preparing cases for formal appeal proceedings before a hearing officer. This is a process which can be exceedingly costly, acrimonious, and time consuming. It is not something that either parents or attorneys enter without very careful consideration of alternative means of dispute resolution. It can be useful to consult with an attorney whenever it appears that a dispute is unresolvable. A wise and careful attorney will help a parent assess all the strengths and weaknesses of their case and may suggest strategies for resolving disputes with an advocate's assistance. Of the thousands of IEP rejections received by the state annually, barely 50 cases end up in formal appeals. The odds for settlement are good when parents have expert assistance.

Where changes do you think need to be made to existing laws to better support children in need?

Each community's Special Needs Parent Advisory Council (SPEDPAC) is available as a resource for parents who wish to work together to improve special education in their city or town. Massachusetts

Advocates for Children are in the forefront of legislative advocacy for children with special needs in Massachusetts. Their website offers a wealth of information for parents wishing to become more informed.

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