

More than you ever wanted to know about what the word consider means.

By Brice Palmer



As if there were not enough things about how school districts interpret various regulations in the IDEA and Section 504, the word “consider” seems to be one of the most irritating roadblocks we face during IEP and 504 meetings.

You present your information, participate in the meeting, you show the Team members your

independent evaluations and other information about your child’s disability and what happens?

The school says, “thank you – we considered it.”

The information you gave to the school falls into an education records dark hole.

The word consider appears in the IDEA many times and I will not catalog them all here. Each time the word “consider” appears in the IDEA, that word is connected to some sort of action.

Two examples:

IDEA 2004 tells us that in developing the IEP, the IEP team shall consider:

1. the child's strengths
2. the parent's concerns for enhancing the child's education
3. the results of the initial evaluation or most recent evaluation
4. the child's academic, developmental, and functional needs. ⁽¹⁾

Another example is connected to independent education evaluations at either public expense or parental expense.

34 CFR § 300.502(c)-(d)² requires the school district to give consideration of independent evaluations obtained at public expense or the parent’s expense. The IEE must meet the school district’s criteria.

¹ Wrightslaw: Special Education Law, 2nd Edition, page 103; Wrightslaw: From Emotions to Advocacy, 2nd edition, page 164.

² Read it here - <http://www.law.cornell.edu/cfr/text/34/300.502>

So what does the word consider mean?

That word is a verb, and has two forms.

Form 1. The district must consider a parent's independent evaluation.
This form of the verb is connected with action. (Transitive verb)

Form 2. Ms. Sped considers me to be a pain in the neck.

According to Black's Law Dictionary, the word consider means to think about, or to ponder or study and to examine carefully.³ (Intransitive verb)

As far as I can determine, each time the word "consider" appears in the IDEA and the federal regulations that implement the IDEA, the word consider is used to signal action.

These are some synonyms for that form of the word consider:

analyze, appraise, assess, be attentive, cerebrated, cogitate, confer, consult, contemplate, debate, deliberate, devote attention to, digest, evaluate, examine, gauge, heed, inspect, mark, meditate on, mull over, muse, notice, observe, pay attention to, ponder, pore over, probe, reckon, reflect upon, regard, ruminate, scrutinize, study, take into account, think about, turn over in one's mind, weigh

The other form of the word consider is also a verb, but it is used to indicate thinking about something (I consider the IDEA as a good law). Another example is "I consider Mr. Palmer to be a pain in the neck advocate".

For those who want to know, the English word consider comes from an Old French word, *considerer*. It means to "reflect on, consider, study. And the old French word *considerer* comes from the Latin word, *considerare*, which means "to look at closely, observe".

What have hearing officers and courts said the word consider (in the action sense) means?

Here are five illustrative decisions and one decision that limits the amount of consideration.

Community Consolidated Sch. Dist. No. 180, 27 IDELR 1004, 1005-06, the court said,

³ Black's Law Dictionary Free Online Legal Dictionary 2nd Ed., <http://thelawdictionary.org/consider/>

"[T]he failure to receive and consider parental information, including evaluations they may obtain, directly denies parents the pivotal role they should enjoy in the development of their child's placement. This role includes not only providing evaluations or other information, but discussing such information. Consideration of such outside information also ensures that a program is individualized and provides a check on the judgments being made by school officials regarding the child."

***Deal ex rel. Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004).**

The court ruled that the school district denied parents of a student with autism the opportunity to meaningfully participate in the IEP process when it placed their child in a program without considering his individual needs.

The 6th Circuit concluded that although the parents were present at the IEP meetings, their involvement was merely a matter of form and after the fact because the district had, at that point, predetermined the student's program and services. It found the district's predetermination violation caused the student substantive harm and therefore denied him FAPE. Remedy: Private school tuition reimbursement. (The District Court in *Deal ex rel. Deal v. Hamilton County Bd. of Educ.*, 46 IDELR 45 (E.D. Tenn. 2006) subsequently determined that the district's eclectic program was substantively appropriate.)

***Briere v. Fair Haven Grade Sch. Dist.*, 25 IDELR 55 (D. Vt. 1996).**

The court ruled that the IEP was significantly defective and the school district limited the parent's right to participate in IEP formulation by refusing to discuss the placement proposed by parent, delaying scheduling an IEP meeting for 23 months, and failing to finalize the resulting IEP for another year. Remedy: Private school tuition reimbursement

***DiBuo v. Bd. Of Educ. of Worcester County*, slip no. S-01-1311 (Nov. 14, 2001)**

The US District Court (Maryland) ruled that an IEP team's failure to consider the private evaluations submitted by the parents was such a serious violation of the IDEA that failing to consider the parent's evaluations established that the school district denied the student of a free appropriate public education.

However, according to one court, consideration can go too far.

D. v. Manheim Township School District, No. 04-4535 at page 15,
(E.D.Pa. 9-27-2007)

The US District Court for the Eastern District of Pennsylvania said,

“Thus, plaintiffs' argument is only compelling if, in requiring the IEP team to "consider" the severity of a student's disability, the regulation requires that the team formally and explicitly deliberate over the taxonomy of the student's diagnosis. This interpretation would betray the sensible understanding of "consider."

“The Oxford English Dictionary defines "consider," in its transitive form, as follows: "to contemplate mentally, fix the mind upon; to think over, meditate or reflect on, bestow attentive thought upon, give heed to, take note of." Oxford English Dictionary Online (2nd ed. 1989). This definition does not suggest that an object of consideration must be articulated and actively discussed. One may "consider" a factor relevant to a decision by bearing it in mind and allowing it to inform and shape one's reflections on a matter.”

Thank you for this interesting question. I hope this little article answers your question about what the word consider means in special education.

As you deal with the school district, remember that words have meaning – sometimes more meanings than we realize.

Brice is a special education advocate who works with parents across the country. He has practiced, taught and written about special education advocacy since 1995. His articles have appeared in *The Beacon Journal*, published by Harbor House Law Press, *Autism Asperger's Digest*, published by Future Horizons, Inc., *Family Focus*, the quarterly newsletter published by Families for Russian and Ukrainian Adoption (FRUA), and various articles appearing at www.wrightslaw.com. Some of the Wrightslaw articles are: *Do the Documents Speak for Themselves?*, *How to Prepare Your Case*, *Learning To Negotiate Is Part of the Advocacy Process*, and *How and Why to Tape Record Meetings*.

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