Emily Rueger

LEGAL SCENARIOS

FALL 2013 EDSP 687

**Understanding Parental Rights According to IDEIA 2004**

1. **A parent asked in writing for a special education evaluation four months ago. He has not heard anything from the local school system (LSS). What is wrong with this and what should the parent do?**

RESPONSE:

After the Parent has given a written request for an evaluation, the LSS has 90 calendar days to complete the evaluation. Since the School has not complied with this timeline, the Parent has a few options to resolve this issue. While not advisable, the parent could go to Due Process. This would entail going to court. The Parent could send a Formal Letter of Complaint to the Maryland State Department of Education (MSDE). This typically works well when procedural guidelines, such as this timeline, are not followed. Another option for the parent is to write an informal letter to the Director of Special Education for the District and/or the School’s Principle. It is advisable for the Parent to attach a copy of the original request with the compliant and to keep a copy of all requests and complaints.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 49, 12, 8, 28 & 29

1. **A parent is given a week’s notice of an IEP meeting, to last 30 minutes, which will be held at the school. She is also sent a list of IEP goals which will be discussed. What is wrong with this picture and what can the parent do about it? What are her options for changing the format of this meeting?**

RESPONSE:

A week’s notice for an IEP meeting is an insufficient amount of time. Parents must be given written notice at least 10 days prior. If, in spite of the late notice, the parents are willing to accept the time given by the LSS, then they can waive their right to 10 days’ notice. If it is not convenient, parents may ask for a different meeting time. Even if the parents are given 10 days’ notice, but are unable to attend at that time. They have the right to request an alternate time, location or to participate via telephone, Skype or another means. They are allowed to bring anyone they deem appropriate such as family, friends or professionals outside the school system and if the Parents need an interpreter, they have the right to have one available at no cost to them. Also, the School System is not allowed to limit the time for the IEP meeting. If the parent wishes to continue discussing and professionals are unable to do so at that time, another meeting must be scheduled. If a parent thinks more time may be needed, it is prudent to request more time be allotted prior to the meeting. Lastly, the parents have the right to be a fully participating member of their child’s IEP team. This includes receiving all documentation that the IEP team plans to discuss at least 5 days prior to the meeting. The parent is also allowed to challenge and request changes to goals and other part of the IEP as they may feel the LSS is in error.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 6, 7, 17,18 &25

1. **A parent is told that her son may have a learning disability because a test showed a discrepancy between his reading score and the grade level cut off score. She did approve the evaluation which included this test and many other measures. What else should she be asking for in determining whether a learning disability exists?**

RESPONSE:

She should ask if an Evaluation or I. Q. was done or if Response to Intervention or Multi-Tiered Instruction was used. She should ask what “scientific, research-based interventions” have been utilized already and how her son responded. She should also ask if her son was screened for any other issues that may account for this discrepancy, such as Physical impairment like vision, hearing and motor disorders or intellectual disability, emotional disturbance, Language or other possible disadvantages or lack or prerequisite knowledge and skills.

SOURCE:

<http://www.ldonline.org/features/idea2004#components>

<http://www.ldonline.org/article/5735/>

Maryland Disability Law Center Special Education Rights Handbook, Pages 10 & 11

1. **The IEP team determines that a child has a behavior disorder and tells the parent that he should get a psychiatric evaluation for the child and ask his insurance company to pay for this. How should the parent respond to this situation?**

RESPONSE:

The Parent should request the School to pay for this as they are responsible to cover all costs of assessments recommended by the IEP Team. After the initial Evaluation, if the parents are not satisfied and/or disagree with the conclusions of the assessment, they may request in writing that an independent evaluation be paid for by the LSS with supporting reasons why the initial evaluation is not sufficient and/or not appropriate. The LSS may either approve with a list of recommended evaluators or deny this request. If they deny the request, the parent then may pay for an independent evaluation themselves. If the Parents wish to they may share the results with the IEP Team. While the IEP team does not have to accept the evaluation, they must consider it. The Parent may ask to be reimbursed, but the LSS does not have to, especially if they do not accept the results.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 5, 10, 6 & 7

1. **A parent believes that his child, who already has an IEP, could perform better in academic subjects if he had access to certain assistive technology (AT). What should the parent do about this?**

RESPONSE:

Anytime the parents wish to change or adjust something on their child’s IEP or have concerns about their child’s education, they are allowed to ask for a Meeting. Parents are allowed to ask for the Presences of a Specialist, such as an AT specialist to the meeting. AT must be considered for all students. If the LSS, after consideration, denies AT, the Parents may ask for a written reason for refusal. If either party is not satisfied with the outcome, a Facilitated IEP Meeting, Mediation or Due Process may be asked for.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 18, 4, 15 & 16

1. **A parent wants certain functional IEP goals for her 10 year old with**

**a severe disability such as playing with peers without disabilities during recess and physical education. Is this appropriate and what should she do?**

RESPONSE:

Critical Life Skills and Functional Goals are appropriate in an IEP. Goals do not have to only be focused on traditional academics. She should request in writing functional goals she would like to see to the IEP team and be ready to discuss these in the IEP Meeting.

SOURCE:

*Focus on Exceptional Children*, Page 14 and Maryland Disability Law Center Special Education Rights Handbook, Pages 9, 26 & 27

1. **A child with an IEP has been suspended for two weeks for cursing at a teacher and overturning a desk. What is wrong with this and what should the parent do to make sure IDEIA disciplinary procedures are followed?**

RESPONSE:

Children with IEPs are to be disciplined the same way a child without an IEP would be if it is determined that the Behavior is not related to the disability. However, if it is determined that this Behavior was a manifestation of the child’s disability, the student is not allowed to be removed from school greater than 10 days or as much as a typical peer would be for the same behavior. Also, if it is determined that the behavior was related to the disability, the appropriateness of the child’s current placement must be examined and changes discussed if necessary as well as a Functional Behavior Assessment conducted. If the parent disagrees with the finding of any of the professionals or conclusions of the relationship of the behavior to the child’s disability, the Parent may begin Mediation or Due Process.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 36-40

1. **A parent wants the LSS to pay for his child to go to private school. He currently has an IEP and is receiving services in his home school. What must the parent do to have any chance of the school paying for private school tuition? When does the school typically not have to consider this?**

RESPONSE:

The Parents have the Burden of Proof in this situation and must have evidence that their child’s current placement is not appropriate. A change of placement for the child to a private institution that the LSS pays for would be made through Due Process. If the Parent wins in Due Process the Parent may not select a private institution based solely on religious or private reasons. The School must have qualified professionals. Before the Parent goes to Due Process the parent should have made the request to the IEP team and then if that did not work, gather evidence.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 23 & 24

1. **In an IEP meeting the parents of a child ask to see research based instructional strategies that the team plans to use to meet certain IEP goals? Is this allowable and what must the team do?**

RESPONSE:

This is Allowable and the team is required to provide the Parent with proof of Research-Based Teaching for their student’s goals.

SOURCE:

Turnbull Page 212, Ch. 10

1. **A parent asks to see his child’s school records. When and how must the school respond to this request?**

RESPONSE:

The School must give a copy of all records kept of the child without “unnecessary delay” and never after 45 days of receiving the request. If no response to the parents request is forthcoming, it is advisable for the parent to write the Superintendent of the LSS. The parent may not be charged for retrieval or processing of request. The Parent may, however, be charged a “reasonable fee” for the schools expense in copying. If the Parents wish to make a correction or change in the records, they may request the school do so. If the school does not, the parent can ask for a hearing. If the parent is still unable to have the desired change made, the parent is still entitled to give an addition of explanation and/or additional information.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 43 & 44

1. **A regular education teacher refers a student for evaluation to the IEP team at her grade level because the student does not speak English. What must the team do in this case?**

RESPONSE:

Since a student should not be referred to Special Education Services because s/he speaks another language beside English, the team should not evaluate her on that basis. The team may however access the Student in his/her native language to see if other factors or a disability are also negatively contributing to the students ability to learn if there might be other concerns as well.

SOURCE: Maryland Disability Law Center Special Education Rights Handbook, Page 15 and Turnbull p. 185 and *Focus on Exceptional Children*, Pages 12-13

1. **A parent whose child is being toilet trained as part of an IEP goal wants Extended School Year (ESY) services so that the toilet training program can continue. Is this allowable and what must the parent do?**

RESPONSE:

ESY must be considered annually. ESY should be considered for Emerging and Critical Life Skills that may be lost or severely thwarted if not attended to beyond the school year. It is not only allowable, but advisable for the student to receive ESY to continue with Toilet Training. The Parent should request ESY in the Least Restrictive Environment in writing to the IEP team early enough to have discussion about it with the LSS.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 26 & 27

1. **The LSS wants a child with multiple disabilities to attend a special school for students with severe disabilities. The parents finds out about this at their first IEP meeting. What should the parents do about this during and after the meeting?**

RESPONSE:

All children have the right for their education to be in the Least Restrictive Environment (LRE). The Parents may request and the LSS must provide good reason why the child is not able to, even with support, be included in their home school. If the reasons are not satisfactory to the Parents or either party is not satisfied with Student placement, Mediation or Due Process may begin.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 13, 47 & 29-32

1. **What are the steps that a parent must take to ensure that his child, whom he believes has ADHD, receives support in school either through an IEP or a Section 504 plan?**

RESPONSE:

It depends what the parents want for their child. If the Parents want an IEP they must go through the IEP Process beginning with referring their child for Evaluation in writing to the school. If the Parents want a 504 Plan, they must contact the office responsible for 504s in there School System District.

SOURCE:

Maryland Disability Law Center Special Education Rights Handbook, Pages 2-5

LD Online: Section 504, the ADA and Public Schools (Smith, 2001)

1. **A parent requests through her daughter’s IEP team that a formal evaluation be done during her senior year so that the daughter can use the evaluation to get Section 504 services in college the next year. What are the school’s legal responsibilities according to IDEIA 2004 regarding this request?**

RESPONSE:

While a total re-evaluation of all the student’s abilities is not required, the School must provide a summary of recommendations for the Student’s Post-secondary goals including information regarding Student’s Functional Performance and Academic Achievement.

SOURCE:

*Focus on Exceptional Children*, Page 12

1. **A student with a disability, who has had an IEP, graduates from high school and gets into college. What does this student need to do to get accommodations at college?**

RESPONSE:

In postsecondary institutions, the student must self-identify and disclose documentation of a current disability in need of academic adjustment(s) to the instruction. Colleges & Universities do not have to provide or pay for evaluations and may require them to provide reasonable services. However, if this is needed, the Student may be able to get Vocational Rehabilitation to assist with the cost. If a re-evaluation is needed the institution/College/University must inform you that your documentation is not sufficient. While the student is no longer entitled to FAPE (Free Appropriate Public Education), the University or College may not charge more that they would charge for a non-disabled student.

SOURCE:

<http://www2.ed.gov/about/offices/list/ocr/transition.html>