

Protecting the Rights of Children With Special Needs

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Promoting Awareness of Parents' Rights

- Education Law Center handout— pp. 130-133 of handbook
- Join an advocacy group
 - Learning Disabilities Assn of PA (LDAP)
 - Pennsylvania Association for Gifted Education (PAGE)
- Don't be afraid of a due process hearing!!!

Promoting Awareness (cont.)

- Request an IEE from your school district
- Consult an attorney concentrating in special education law
- Don't believe your District's administrators when they say:
 - It's against District policy to . . .
 - We don't have the money to . . .

Promoting Awareness (cont.)

- We don't have the staff to . . .
- Things will get much better for your child when they reach middle school, high school, etc.
- Don't go to due process. Our District never pays parents' attorney's fees.

Least Restrictive Environment

- “To the maximum extent appropriate, [Districts shall educate] children with disabilities . . . with children who are not disabled, and . . . removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability . . . is such that

Least Restrictive Environment (cont.)

- . . . education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. Sec. 1412(a)(5)

Continuum of Placement

- Regular classroom with itinerant support
- Resource room/ part-time special ed classes
- Full-time special ed classes
- Approved private schools
- Residential placement

Oberti v. Bd. Of Ed. of Clementon Sch. Dist. (3rd Cir. 1995)

1. Can District educate child in regular classroom with supplemental aids and services?
 - Training and support for teachers
 - Itinerant instruction
 - Resource rooms
 - Curriculum modifications

Oberti (cont.)

2. Has the District made every effort to include the child in programs with non-disabled children to greatest extent possible?
 - Negative effect of inclusion on other kids?
 - Benefit of inclusion on child?
 - No consideration of cost

Problems post-Oberti

- Classroom teachers untrained in special ed
- Percentage of mainstreamed students low
- PDE compliance monitoring seen as insufficient
- Districts unwilling to try supplementary aids and services
- No sanctions for non-complying districts

Gaskin Settlement

- PDE promises to require Districts to adhere to *Oberti* and IDEA
- Services will be provided in accordance with future Memorandum of Understanding
- PDE, with input of “Advisory Panel,” will make information re supplementary aids and services available to parents.

Advisory Panel

- Purpose: “review system-wide progress in delivery of SDI”
- 15 member panel
 - 3 selected by Director of Bureau of Special Ed
 - 12 selected by “organizational plaintiffs”
- Will consider data re: mainstreaming in each district

5-Tier LRE Compliance Monitoring

1. 20 schools most in need of systemic LRE changes
2. Warning designation- next lower 10%
3. Alert designation- remaining bottom half
4. Targeted monitoring- referred by Bureau based on special circumstances
5. Regular cyclical monitoring of all Districts

Tier 1 LRE Monitoring

- 3 member monitoring teams
- 2-day on-site visits
- Post-visit follow-ups
- District must complete CAP- corrective action plan

Tier 2 LRE Monitoring

- Written warning from Bureau
- Must take steps to improve performance
 - Attend PDE training
 - Technical assistance from PDE
 - District must submit action plan

Tier 3 Monitoring

- Written “alert” from PDE
- Bureau identifies areas for improvement

Tier 4- Targeted Monitoring

- Used selectively by Bureau
- Based on referral by staff member

Tier 5- Regular Cyclical Monitoring

- Consistent with existing federal and state law
- Monitoring once per six years
- Sanctions include:
 - withholding of funds
 - redirecting funds where needed
 - Professional disciplinary action

Complaint resolution

- PDE must investigate each complaint
- PDE must use “best efforts” to interview persons involved
- If it finds violation, PDE must follow up during “next compliance monitoring”

Training

- Bureau must supply Districts with:
 - On-site training
 - Technical assistance in “specialized interventions
 - Professional development
 - Assistance with
 - “collaborative teamwork”
 - “customized, sustained technical assistance plans”

Enforcement

- PDE will send Plaintiffs' counsel written certifications each year
- Plaintiffs' counsel receive \$2,000,000+ in attorney's fees & costs
- Disputes lead to mediation, then petitions to court

What does the Future Hold?

- Much left to future agreements
- Show me the money!

Compensatory Education

- Definition:
 - In-kind remedy
 - Provides educational services beyond regular curricular offerings
 - Designed to make up for earlier deprivation
 - Not dependent on District's bad faith
 - Actual notice to District not required

How Much Compensatory Education is Appropriate?

- Look to actual number of hours of deprivation
- School year must be at least 180 days, 990 hours of instruction
- Procedural violations do not always result in comp ed

Value of Compensatory Education

- Often, Appeals Panel will specify
- If not specified:
 - Parents determine nature of comp ed
 - “any reasonable remedial, compensatory or enriching instruction”
 - After school or during the summer
 - Individual tutoring allowed

Is Student-on-Student Disability Harassment Illegal?

- Yes, if:
 - District fails to take reasonable steps to provide a safe environment
 - District turns blind eye to harassment
 - Harassment must be “serious and pervasive”

What to do if your Disabled Child is being Harassed

- Talk to the teacher
- Meet with principal or superintendent
- Make written record
- Convene IEP team meeting
- File due process hearing request

What if Harassment Continues

- File compliance complaint with PDE
- File complaint with PHRC, Office of Civil Rights
- File civil rights complaint under:
 - Section 504
 - Title II of ADA
 - IDEA

Section 504/ Title II Claims

- “hostile environment”
- Interferes with student’s participation in or receipt of benefits & services
- Must be “severe, persistent or pervasive
- Requires actual/ constructive knowledge of District