

UNILATERAL ENROLLMENT IN A NON-PUBLIC SCHOOL

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A frustrating situation for an administrator to deal with is when he/she receives information that a parent has unilaterally placed their child in a non-public school (NPS) and then request reimbursement by the school district of the private school tuition. Even more frustrating and worrisome is when the parent unilaterally places their child without first notifying the school district of their intent to do so.

The following information will provide a framework for an administrator to understand his/her legal rights and obligations when a parent unilaterally places their child in a NPS and then seek reimbursement by the school district. In addition, the following information will assist you, the administrator, in knowing how to respond to this type of situation by knowing what steps must be immediately taken and what preventative steps can be taken.

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEIA) AND CALIFORNIA LAW:

- A. IDEIA and California law state that a parent “of a child with a disability, who previously received special education and related services” may be entitled to reimbursement for placing a student in a private school without the agreement of the local school district if the parents prove at a due process hearing that:
 - 1. The district had not made FAPE available to the student prior to the placement;
 - 2. The private school placement is appropriate; and

(34 C.F.R. § 300.148 (c); Cal. Edu. Code § 56175)
- B. IDEIA and California law also state that the cost of reimbursement *may be* reduced or denied if:
 - 1. At the most recent IEP team meeting that the parents attended prior to the removal of the child from public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - 2. At least 10 business days (including holidays) prior to the removal of the child from public school, the parents did not give written notice to the school district of the information described in paragraph 1 above.

- C. Case law states that parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit, however, parents are not required to restrict their unilateral placement to the content of the IEP, need not provide a placement that is certified by the state, and need not provide a placement in the least restrictive environment. (*Florence County Sch. Dist., Four v. Carter* (1993) 114 S.Ct. 361; *Alamo Heights Independent Sch. Dist. v. State Bd. Of Education* (5th Cir. 1986) 790 F.2d. 1153)
- D. ***Forest Grove School District v. T.A.*** (9th Cir. 2008) 523 F.3d. 1078:
1. A student who had attended the district solely as a regular education student was placed unilaterally by his parents in a private residential school. Parents then sought reimbursement under special education law.
 2. School district argued that it could not be responsible based on the IDEA's statement that only students "who previously received special education and related services" could obtain reimbursement.
 3. The court disagreed with the district, and held, despite the IDEA language described above, courts and administrative law judges retain discretion to award reimbursement for private placements for students who never received special education services under principles of "equity," or fairness.
 4. Factors to consider, among others, the existence of other more suitable placements, the effort expended by the parents in securing alternative placements, the general cooperative or uncooperative position of the school district, and whether the parents provided notice of their intention to place the student in a private school.
 5. Two mistakes made by the school district which gave a basis for the judges to find in favor of the parents:
 - i. District did not assess in all areas of suspected disability. In internal meetings, the staff discussed and noted in writing that the student had "maybe ADD/ADHD?" and also mentioned "suspected ADHD." The District later assessed the student only under learning disability.
 - ii. District psychologist writes in his report that student was not eligible on the basis of a learning disability under IDEA, but stated "possible 504." District did not follow up to determine if a 504 plan was necessary.

Necessary Immediate Action:

When a school district learns that a parents has unilaterally placed their child in a NPS, the district must respond immediately to the parent so that the parent is notified in writing that the school district will not be paying for the placement as the district has offered student FAPE.

- A. A RESPONSE TO PARENT'S UNILATERAL PLACEMENT INTO A NPS IS ALWAYS NECESSARY
- B. The school district must send a letter to the parent(s) responding to parent's email/letter advising of the unilateral placement into a NPS (see attached sample letter). The letter should address the following:
 - 1. The district is offering FAPE, and therefore, will not be paying for the NPS
 - 2. Describe what offer of FAPE district has made
 - 3. Offer to convene IEP meeting to review IEP, make any modifications needed to goals, accommodations, and services, and to discuss whether student needs to be assessed in any other area of suspected disability
 - 4. If there is no IEP in place, offer to meet to discuss parent's concerns and to discuss assessment plan that will be offered in all areas of suspected disability

Important Issues to be Discused at IEP Meeting:

The following delineates issues that must be dealt with at an IEP meeting held to discuss the parent's unilateral placement of their child in a NPS.

- A. The IEP team should discuss the parents's concerns and document in the IEP notes the parent's concerns and the district's response
- B. Review current IEP and make any modifications needed to goals, accommodations, and services
- C. Discuss whether student needs to be assessed in any other area of suspected disability
- D. Discuss if AB 3632 referral needs to be made
- E. Reaffirm district's offer of FAPE and document the FAPE offer in the IEP notes

How the School District Can Potentially Avoid a Parent's Action of Unilaterally Placing Their Child in a NPS:

A school district should try to address issues of suspected disability, need for assessments, and parents' concerns regarding placement so that parents will be less inclined to unilaterally place their child in a NPS when they believe the district is not offering FAPE. Most importantly, the district is taking steps to protect itself during a due process hearing, if necessary, by showing that steps were taken to meet the unique needs of student requiring special education services and that the parents' concerns were addressed.

The following delineates issues a school district can and should address for all students suspected of having a disability:

- A. Has the student been assessed in all areas of suspected disability?
- B. Make sure assessments are up-to-date (assessed in last 1 ½ years or less)
- C. Have parents made comments to teachers/staff about district placement not being appropriate? If so, what action was taken? Was IEP meeting held?
- D. Make sure there is open communication with teachers/staff about any suspected disability)
 - If child is not receiving special education services, have the general education teachers go through a **checklist** to determine if a student should be referred for an evaluation if a disability is suspected (see sample checklist attached)
- E. If child does not have an IEP, is a 504 plan appropriate?
- F. Has the student had extended and unexplained absences from school?

**RESPONSE LETTER TO PARENTS
NOTICE OF WITHDRAWAL FROM SCHOOL**

[date]

Re:

Dear Ms. Parent:

On July 1, 2008, the District received an email from you which informs the District that you had withdrawn your son ("Student") from the School District, and had already privately placed your son at the School for Gifted Autistic Children.

While you are certainly free to privately place and pay for your son to attend a private school, the District would like you to know that the District is continuing to offer a Free Appropriate Public Education (FAPE) for your son under the IEP dated December 13, 2007. The District's offer of FAPE includes appropriate goals and objectives, accommodations/modifications, services, and placement to meet your son's educational needs **[add details re your specific matter]**.

The District is concerned that Student was removed from his junior high school placement too soon to address any issues that may have arisen. The District would like to meet to address the concerns you raised in your July 1 email.

The District is confident that the IEP team can review Student's IEP and make any needed modifications of his goals, accommodations, and services. The District has a range of additional services available to meet Student's needs, including making an AB 3632 referral for mental health services, if needed.

The District will be holding an IEP meeting to discuss your concerns. The meeting has been scheduled for July 7, 2008 at 8:15 am. If you are unable to attend the scheduled meeting, please call to have the meeting rescheduled.

Respectfully,

Administrator



Suspected Disability

Indicators

- ☐ Teachers or parents frequently express concerns
- ☐ Student has limited school success as demonstrated by
 - failing grades
 - poor test performance
 - retention or consideration of retention
- ☐ Student was formerly enrolled in Special Education
- ☐ Student was previously determined ineligible for Special Education
- ☐ Student has multiple discipline problems including suspensions and expulsion
- ☐ Student returns to school following a serious illness or injury
- ☐ Student has a known chronic health problem
- ☐ Student is identified as ADD or ADHD
- ☐ Student exhibits a pattern of substance abuse
- ☐ Student has extended and unexplained absences from school