

ASE Legislative Update

New legislation, case law and advisories –
What special educators need to know!

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MA DESE
Advisory on Inter-District School
Choice Pursuant to MGL c. 76, s. 12B
(April 23, 2019)

FAQs for Special Educators

The Basics

- When admitting students through school choice, a school district CANNOT consider or discriminate on basis of physical handicap, special need or academic performance.
- Tuition is \$5,000 per students, HOWEVER, for special education students, an additional increment is added to the base regular education amount to cover the cost of these services.
- Amounts are determined using calculator similar to circuit breaker.

Transportation

- School choice students are not eligible to receive transportation UNLESS a student's disability requires transportation and their IEP includes special transportation as a related service.

Must a school choice district admit students who require OOD placement?

- YES!
- Neither a sending district nor a receiving district may require a student who needs an OOD placement to unenroll from the receiving district or to re-enroll in the sending district.

Who is responsible for evaluations?

- The receiving district!
- While school choice tuition for students with disabilities is determined by a cost calculator similar to circuit breaker, this does not include the cost of evaluations – this is covered by the receiving district.

Administrative Advisory SPED 2018-2

Secondary Transition Services and Graduation with a High School Diploma

And Older Advisory, but still a Tricky Issue

- Graduation is a change in placement.
- While Parents/students may not unilaterally “refuse” a diploma for which all requirements have been met, they can reject the change in placement (graduation) and assert “stay put” rights.
- But what does this mean for next steps?

Practice Tips

- Stay put is the CURRENT IEP and Placement
 - District does NOT need to draft a new IEP or propose placement in a transition program unless otherwise agreed to by the Team.
- Stay put implies that a dispute resolution process will be initiated – ie request for IEE, request for mediation, hearing request
 - Parent cannot just assert “stay put” from 18-22 without taking some sort of action.
- Documentation is key – clearly document the reason for graduation and also the reasons for denial of continued eligibility
 - Use progress reports, current performance and evaluations

Recent Cases with Special Education Implications

Barney v. Akron Bd. of Educ.,
2019 U.S. App. LEXIS 5437 (6th Cir. 2019)

- In conjunction with individual health plans, IEPs are often updated to include information about a student's food or other allergy and its impact on the student's education or placement.
- But parents often want nothing short of a guarantee of their child's safety – e.g. peanut free school as opposed to peanut free classroom or lunch table.
- Does the IDEA require that schools do more?
- The Sixth Circuit says “NO.”

Barney v. Akron Bd. of Educ.

- Under the IDEA, a student's IEP need only be “reasonably calculated” to provide educational benefit.
- In this case, the student's allergy plan did not need to be perfect.
- The Court was satisfied that the district's plan appeared to make reasonable attempts to keep the student safe at school notwithstanding his allergy.

Practice Tips

- When addressing student allergies in the IEP, the standard is one of “reasonably calculated.”
- This does not alleviate a district of its requirements under Section 504 or to have a comprehensive and appropriate individual health plan.

*Matthew E. Pollack, as next friend of B.P.; Jane Quirion, as next friend of
B.P. v. Regional School Unit 75*
(1st Cir. 2018)

- Parents of non-verbal autistic student wanted to use GPS device to record student's school day, so that they could know what went on during his day.
- First Circuit upheld decision of administrative tribunal.
- Carrying the recording device would have no demonstrable benefit to the student and no increased access for the student.

Practice Tips

- When presented with these requests, consider the features of the device requested to be used and the student's individual need for each feature.
- Work with parents and the device company to come up with an arrangement that meets the student's individual needs.
- For example, AngelSense has a variety of different template agreements that school districts and parents can enter into with regard to disabling recording, who can activate recording and under what circumstances.

K.N. and J.N., on behalf of J.N. v. Gloucester City Board of Education

(74 IDELR 73, U.S. District Court, New Jersey, March 29, 2019)

- Court found district needed to provide a 1:1 aide supervised by a special educator for student attending after school program.
- Student had previously had supervised 1:1 aide, which managed his behaviors so that he could access the after school program.
- When provided with a 1:1 aide NOT supervised by a special education teacher, student's behaviors were so significant he could not attend the after school program, and therefore could not access the program.

Practice Tips

- If a student needs a reasonable accommodation to have meaningful access to a school program, districts must provide one.
- With after school programs, it becomes an issue of access under 504 and not FAPE under the IDEA.
- Really consider what the student needs to access the program in the same manner as nondisabled peers.

Pending Legislation

What is ASE doing to support your interests?

The Promise Act

- Bill aimed, in part, to address underfunding of education for low-income students.
- The Joint Education Committee is currently in the process of renegotiating the low-income rate.
- ASE, in protecting the interests of all its school districts (low, median and high income), is advocating against a redistribution/diversion of existing funds and in favor of an increase in funds for low income districts.

School Interpreter Task Force

- Looking to provide in-the-moment interpretation services for students and families.
- ASE has submitted substantive recommendations to the task force advocating for use of language line (call-in) services as opposed to implementation of a certification process for school interpretation services.

Dyslexia Screening

- As you are likely aware, on October 19, 2018, the State Legislature approved Chapter 272 of the Acts of 2018.
- The new law requires DESE, in consultation the EEC, to "issue guidelines to assist districts in developing screening procedures or protocols for students that demonstrate one or more potential indicators of a neurological learning disability, including, but not limited to, dyslexia."
- The guidance is still pending, but anticipated for the 2019-2020 school year.

What to Do in the Interim?

- School district already recognize Dyslexia as falling under the category SLD in Reading.
- Evaluation Tools that can currently be used as screeners and are already used district evaluation process are:
 - CTOPP
 - TOWL
 - WIAT III (has a Dyslexia Index Score that can be used for screening)
 - Gray Oral Reading
 - KTEA (has a Dyslexia Index Score that can be used for screening)

What to do in the Interim Cont...

- The updated law does not alter the supports offered via general education interventions and services in IEPs.
- School districts should continue to use the RtI Tiered Intervention Systems already in place to identify students who require general education interventions.
- School districts should also continue to use the Student Support Team (SST) to develop Curriculum Accommodation Plans should a child continue to struggle academically and require further intensive interventions.
- Finally, the SST may also recommend a referral for a special education evaluation if, after all general education interventions, the student continues to struggle or if the SST determines that even though the student is participating in general education interventions, there is a more immediate need to proceed to a special education evaluation.

QUESTIONS?

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