

New Legal Guidance and Law on Student Issues

NEW LEGAL GUIDANCE AND LAW ON STUDENT ISSUES

There have been several interesting developments in student-related legal requirements in the past month that school districts and special education cooperatives need to know. They are described below, in order of their publication.

I. ISBE GUIDANCE ON TMC AND EARLY CHILDHOOD TRANSITION

On January 15, 2013, the Illinois State Board of Education issued notification of revisions to the IDEA proportionate share timely and meaningful consultation (“TMC”) time lines. In the past, school districts have been required to hold TMC meetings in the fall of each school year with representatives of private elementary and secondary schools and home schools regarding the use of proportionate share IDEA funds for services to eligible students with disabilities who attend such schools. In an attempt to better budget proportionate share expenses and to prevent delays in providing services, ISBE has revised the TMC



timelines for 2013-2014 as follows:

- **April 2013:** ISBE will release estimated proportionate share calculations based on the March, 2013 FACTS child count data.
- **May 31, 2013:** Final date for districts to convene TMC.
- **June 15, 2013:** TMC documents due to ISBE.
- **July 1, 2013:** Date to start filing FY 2014 IDEA grants, to include proportionate share expenses.
- **August 2013:** ISBE releases final proportionate share calculations.

The ISBE also issued a guidance document titled *Early Intervention to Early Childhood Transition Frequently Asked Questions* (January 2013), which answers 21 questions concerning early childhood transition meetings, evaluations, services, and placement. Some highlights from this FAQ include the following:

- The time frame for conducting the transition planning

conference for children moving from IDEA Part C (Early Intervention) to Part B programming is between two years, three months and two years, nine months. The conference must be completed 90 calendar days before the child's third birthday.

■ As of July 1, 2012, if a child is referred to Child and Family Connections less than 45 days before his or her third birthday, the CFC may send the child directly to the local school district for evaluation.

■ If the child's third birthday is during the summer, the transition planning conference should take place at least 90 calendar days before the end of the school year to ensure that an IEP is in place by the child's third birthday.

■ A child who will turn three during the school year may enter school at the beginning of the school year as a two-year-old with an IEP, but may not receive both Part C Early Intervention services and Part B IDEA services at the same time.

■ The IEP team must consider a general education preschool setting as the first option for placement, in consideration of the least restrictive environment. General

education preschool options may include park district programs, community preschools, blended programs, Head Start, child care programs and programming at home.

II. ERIN'S LAW REQUIRES DISTRICTS TO PROVIDE SEX ABUSE AWARENESS

Effective January 24, 2013, Public Act 97-1147, known as "Erin's Law," requires Illinois school districts to add age-appropriate sexual abuse and assault awareness and prevention education to the health curriculum for pre-kindergarten through 12th grade students. The purpose of Erin's Law is to equip children with awareness of sexual abuse so that they report abuse and, ultimately, to reduce victimization. "Erin," the law's namesake, was a victim of childhood sexual abuse but was unable to report her suffering until many years later. Her public campaign for awareness has resulted in Erin's Law being passed in numerous states. A previous Illinois Public Act established the Erin's Law Task Force. The Task Force's May 2012 Executive Summary, available on the Illinois State Board of Education website, at www.isbe.state.il.us/reports/erins-law-final0512.pdf, sets forth core components of effective and comprehensive child sexual abuse prevention programs and provides contact information for

statewide resources. The Advocacy Network of Illinois is developing a curriculum, including a “Happy Bear Mascot,” to teach young children about good and bad touch and reporting uncomfortable situations. The Task Force Executive Summary also provides additional references and resources for building curriculum.

III. “DEAR COLLEAGUE LETTER” ON PARTICIPATION OF STUDENTS WITH DISABILITIES IN EXTRACURRICULAR ATHLETICS

On January 25, 2013, the U.S. Department of Education’s Office of Civil Rights (OCR) issued guidance clarifying school districts’ responsibilities under Section 504 to afford students with disabilities an equal opportunity to participate in extracurricular athletics. In addition to providing a summary of school districts’ obligations under Section 504 and its regulations, OCR reminded districts that the Section 504 regulations require them to provide an equal opportunity for students with disabilities to participate in nonacademic and extracurricular services and activities, which include but are not limited to, competitive athletics. OCR clarified that a school district’s obligations under Section 504 and its regulations supersede any rule of any association (e.g., the

IHSA), organization, club, or league that would render a student ineligible, or limit a student's eligibility, to participate in any aid, benefit, or service on the basis of disability.

OCR also explained that simply because a student is a "qualified individual" protected under Section 504 does not mean that the student must be allowed to participate in any selective or competitive program offered by a school district. Rather, a district may require that a student with disabilities meet criteria of skill level or ability in order to participate in the program, so long as such criteria are not discriminatory. OCR reiterated the long-standing Section 504 requirement that school districts must provide reasonable accommodations, aids or services necessary for students with disabilities to have an equal opportunity to participate in athletics, unless doing so would result in a fundamental alteration to the program or activity. While a school district may adopt legitimate safety standards for a student's participation in an athletic program or activity, the district may do so only after considering whether a student with disabilities can participate safely if provided reasonable accommodations.

School districts were cautioned against making decisions about

programs, activities and capabilities of individual students with disabilities based on presumptions, generalizations, or stereotypes about specific disabilities. OCR also encouraged districts to work with the community and athletic associations in integrating students with disabilities to the maximum extent appropriate for a student and developing opportunities to include students with disabilities in extracurricular athletic activities.

IV. REVISED IDEA REGULATION REGARDING PARENT CONSENT FOR ACCESS TO MEDICAID FOR IEP SERVICES

On February 14, 2013, the U.S. Department of Education published an impending revision to the IDEA implementing regulations. Effective March 18, 2013, 34 C.F.R. §154(d) is amended to permit parents to provide a **one-time written consent** for their district to access public benefits or insurance (e.g., Medicaid) to pay for certain IEP services, and to require districts to provide **annual written notification** of parents' rights in this area. Until now, school districts and special education cooperatives were required to secure parent consent every time access to public benefits or insurance was sought. The regulatory revisions are designed to make it easier for districts and



cooperatives to access public benefits while safeguarding parents' rights at the same time.

Pursuant to the new regulations, before accessing the parents' or child's Medicaid benefits for the first time (if, and only if, a parent agrees to do so), a district must obtain a one-time written consent from the parents, after providing the annual written notification statement. The one-time written consent must specify:

- The personally identifiable information that may be disclosed (e.g., records or information about the child's services);
- The purpose of the disclosure (e.g., billing for services);
- The agency to which disclosure may be made (e.g., Medicaid); and
- That the parent understands and agrees that the district or cooperative may access the child's or parent's public benefits to pay for the child's services.

The revised regulation also requires districts to provide annual written notification to the parents (1) before accessing Medicaid for the first time and obtaining the parents' one-time written consent, and (2) annually thereafter. The annual written notification must be in a language understandable to the general public and in the native language of the parent unless it is clearly not feasible to do so, and must include the following:

- A statement of the parental consent provisions in the IDEA regulations;
- A statement of the "no cost" provisions in the IDEA regulations;
- A statement that the parents have the right to withdraw consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and
- A statement that the withdrawal of consent or refusal to consent to disclose personally identifiable information to

the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the child's district of its responsibility to ensure that all required IEP services are provided at no cost to the parents.

The annual written notification may be mailed to the parents, e-mailed, provided at the student's IEP meeting, or provided by some other means. A district may determine when the annual written notification is provided to parents each year.

If a district already has written parental consent to access public benefits or insurance at the time the new regulation takes effect, the district must provide the annual written notification but need not obtain a new written consent unless and until there is a change in the services the district provides to the child. Furthermore, the district is not required to obtain consent again when a child transfers schools within the district.

If you have any questions about these new guidance documents or legal requirements, please call one of our attorneys at 630/928-1200 (Oak Brook) or 708/799-6766 (Flossmoor).