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Special Education

Practical Applications of the Individuals with Disabilities Education Improvement Act

by Viola S. Lordi and Eric I. Bueide

Special education is an emotionally charged legal practice area. Special education attorneys must strive to bridge the gap between parents of children with educational disabilities and boards of education charged with educating all children enrolled in the public schools. These parties frequently take contrasting approaches to the unique challenges of: 1) identifying each child who may be educationally disabled, 2) evaluating the child; 3) selecting from among disability categories to classify the child in the category that best reflects his or her specialized educational needs; and 4) designing and implementing for each classified child an individualized education program (IEP) that will enable the child to receive meaningful educational benefit proportionate to his or her intellectual potential in the least restrictive environment.²

Pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA),³ and corresponding New Jersey regulations,⁴ all students with disabilities are entitled to a free appropriate public education (FAPE) that is, by definition, responsive to their special educational needs. IDEA is intended to ensure that every child with a disability has available to him or her a FAPE emphasizing special education and related services designed to meet the child's unique needs and to prepare the child for employment and independent living.⁵

In today's stressed economic climate, it is more important than ever that special education attorneys are mindful of practical solutions to disputes arising under IDEA. What this means is that attorneys should impress upon their clients the importance of establishing cordial, open dialogue between parents and boards of education, striving to respond to requests in a timely manner, and above all, working to ensure that each disabled child receives a FAPE that enables him or her to receive a meaningful educational benefit in the least

restrictive environment. By adhering to these principles as best he or she can, a special education attorney can potentially save clients thousands of dollars that would otherwise be spent on litigation often rooted in misunderstanding or poor communication, or otherwise arising from an underlying lack of trust between the parties.

In *Ridgewood Board of Education v. N.E. as Guardian Ad Litem for M.E.*, the Third Circuit Court of Appeals set forth guidelines for boards of education to follow in order to provide each educationally disabled student with a FAPE.⁶ Importantly, the court held that the determination of whether a placement is "appropriate cannot be reduced to a single, bright-line standard."⁷ Instead, the court opined that the amount of benefit required of an appropriate IEP necessitates a careful student-by-student analysis that "must be gauged in relation to the child's potential."⁸ In other words, for some students placement in a mainstream classroom with limited in-class support may be appropriate, but for others, a FAPE can be provided only by a therapeutic residential placement.

Ridgewood involved M.E., a student with an educational disability. At the time M.E.'s parents petitioned the New Jersey Department of Education for a due process hearing early in the 1996-1997 school year, he was eligible for special education and related services under the disability category of "specific learning disability," based on a great discrepancy between his intelligence and his reading ability.⁹ M.E.'s IEP provided for resource center instruction (that is, instruction in a small class reserved for special education in a particular subject) in all academic classes, supplemental reading instruction, and speech/language therapy once a week.¹⁰ M.E.'s parents felt this IEP provided even fewer services than the one that had minimal educational benefit in the prior school year.¹¹

M.E. had previously struggled academically despite intelligence test scores in the 95th percentile.¹² Nevertheless, the

board asserted that his latest IEP provided him with “educational benefit.”¹³ M.E.’s parents remained unhappy, and enrolled him at a residential private school for students with learning disabilities, where he “made steady and considerable progress.”¹⁴

The court held that the Ridgewood Board of Education failed to provide M.E. with a FAPE because it did not demonstrate that M.E.’s IEP had enabled him to receive “significant learning” and a “meaningful educational benefit.”¹⁵ Specifically, the court rejected the board’s argument that M.E.’s IEP was appropriate because it provided him “more than a trivial educational benefit.”¹⁶ Holding that IDEA imposes a higher standard, the court explained that the board had failed to give adequate consideration to M.E.’s high intellectual potential prior to concluding that his IEP was appropriate.¹⁷

More recent case law reflects an increasing emphasis by the courts on a practical application of IDEA, one which fosters collaboration between local boards of education and parents in order to ensure that children eligible for special education and related services are provided with IEPs that enable them to receive a meaningful educational benefit in the least restrictive environment.

In *M.S. and D.S. o/b/o M.S. Jr. v. Mullica Township Board of Education*,¹⁸ the Third Circuit affirmed the district court’s opinion granting judgment for the board, and denying reimbursement to M.S. Jr.’s parents for private tuition, related services, evaluations and legal fees.¹⁹ The court found that the parents refused to cooperate with the board’s child study team (CST), and thus were not entitled to reimbursement for their unilateral out-of-district placement of M.S. Jr. (that is, placement of M.S. Jr. in a private school).²⁰ The district court observed that the parents had “thwarted and obstructed the CST at every turn,”

even as the board “acceded to each and every one of the parents’ demands” regarding the content of M.S. Jr.’s IEP.²¹ The parents continuously demanded placement out of district, even after the board incorporated into M.S. Jr.’s IEP all of the recommendations of independent evaluators hired by the parents.²² The parents also refused to consent to a routine evaluation, which was a precondition to the CST’s development of an IEP for the current school year.²³

The *Mullica* court’s refusal to award tuition reimbursement to parents who declined to collaborate in educational planning with their child’s board of education demonstrates that the interests of both boards of education and parents, and ultimately the interests of children with disabilities, are best served by a practical approach to IDEA. Nevertheless, another significant decision from 2008 demonstrates that even if parents have not cooperated with a board of education in the past, the board must still react promptly and in a fully cooperative manner each time the parents do engage its CST.

In *J.S. and J.S. on behalf of R.S. v. South Orange-Maplewood Bd. of Ed.*,²⁴ the district court held that parents of an emotionally disturbed child, R.S., were properly awarded tuition reimbursement for their unilateral placement of R.S. out of district, despite the parents’ earlier lack of cooperation with the board’s staff in the evaluation process.²⁵ A full year had passed between the parents’ submission to the board of a psychiatric evaluation report and the board’s eventual decision to classify the child based on that report.²⁶ Prior to the submission of that report, the parents repeatedly failed to cooperate with the board in its efforts to evaluate R.S. in order to determine her eligibility for special education and related services.²⁷ Nevertheless, once the board had the parents’ total cooperation and the “necessary information to find R.S. eligible for special education, the

board’s failure to reach a conclusion on R.S.’s status for over a year denied R.S. a FAPE, as guaranteed by IDEA.”²⁸

In *W.C. and S.C. on behalf of R.C. v. Summit Bd. of Ed.*,²⁹ the district court reduced by half its award of tuition reimbursement for the parents’ unilateral out-of-district placement of their educationally disabled child because the parents declined to cooperate with the board on several occasions in the effort to develop an IEP.³⁰ In November 2004, the board had offered an “interim” IEP for R.C., a preschool-aged autistic child, which placed her on home instruction through the end of the 2004-2005 school year.³¹

The court held that the IEP did not enable R.C. to receive a meaningful educational benefit, despite the board’s arguments that it would not have actually left the interim home instruction placement in place for as long as the IEP dates indicated.³² Nevertheless, the court declined to award full tuition reimbursement to the parents because they had planned extensively for an out-of-district educational placement without informing the board, and had refused on one occasion to sign a release form that would allow R.C.’s early intervention case coordinator to participate in an IEP meeting.³³

Conversely, the district court has ruled in favor of parents who maintained clear lines of communication with boards of education throughout the IEP process. In *D.L. and K.L. on behalf of J.L. v. Springfield Bd. of Ed.*,³⁴ the court held that the parents’ placement of J.L. out of district was appropriate, even though they had neglected to “try out” the board’s proposed IEP.³⁵ The parents had reached out to the board as soon as their son became eligible for special education and related services, at age three.³⁶ They cooperated as the board evaluated J.L., and participated in the development of an IEP.³⁷

When the board finalized the IEP, the

parents provided the board with written notice of their rejection of the IEP as inadequate for their son's needs, and their intent to seek additional special education services for him.³⁸ They also provided the board written notice of their intent to seek reimbursement for such services after 10 days from the notice.³⁹ Although the parents requested special education services before their son could attend a school within Springfield, they had informed the board of their son's special needs and requested an evaluation at the earliest possible opportunity.⁴⁰

The court observed, "[the parents] should not be penalized because [their son] was not technically enrolled in a district school, and he had not yet received any services from Springfield."⁴¹

The decisions discussed above demonstrate the willingness of the courts to reward parties who apply IDEA and its implementing regulations as instructions for team building, rather than rules for battle. These decisions inform all involved in special education the courts undoubtedly value efforts by both boards of education and parents to meaningfully engage in the IEP process by establishing cordial, open dialogue with one another, being receptive to one another's opinions, and striving to respond to each other's requests in a timely manner.

Reasonable parties can disagree about the appropriate evaluation of, and programming and placement for, a child with an educational disability. The parties' disagreement may require litigation even in the context of the best level of communication. However, the practical, collaborative application of IDEA described in this article and supported by the courts will save clients (that is, parents and boards of education) time and money. It will go a long way toward satisfying the fundamental requirement of the IDEA: Ensuring that each educationally disabled child enrolled in a

public school district receives a FAPE offering him or her a meaningful educational benefit in the least restrictive environment. ◊

Endnotes

1. N.J.A.C. 6A:14-3.1(a).
2. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).
3. 20 U.S.C. §1400 *et seq.*
4. N.J.A.C. 6A:14-1.1 *et seq.*
5. 20 U.S.C. §1400 (d)(1)(A).
6. *Ridgewood*, 172 F.3d 238.
7. *Id.* at 247.
8. *Id.*
9. *Id.* at 244-5. At the time the *Ridgewood* case was heard, New Jersey's Administrative Regulations did not correspond with the eligibility categories listed in IDEA. M.E. was actually classified under the eligibility category of "perceptually impaired," which was a precursor to "specific learning disability."
10. *Id.*
11. *Id.*
12. *See Id.* at 243-44.
13. *See Id.* at 246.
14. *Id.* at 245.
15. *Id.*
16. *Id.*
17. *Id.* at 248.
18. 485 F. Supp. 2d 555 (D.N.J. 2007), *aff'd* 263 Fed. Appx. 264 (3d Cir. 2008).
19. *Id.* at 568.
20. *Id.*
21. *Id.* at 565.
22. *Id.*
23. *Id.* at 563.
24. No. 06-3494, 2008 U.S. Dist. LEXIS 24031, slip op. (D.N.J. March 26, 2008).
25. *Id.*, slip op. at 6.
26. *Id.*
27. *See Id.*, slip op. at 1-2.
28. *Id.*, slip op. at 6.
29. No. 06-5222, 2007 U.S. Dist. LEXIS 95021, slip op. (D. N.J. Dec. 31, 2007).

30. *Id.*, slip op. at 5.
31. *Id.*
32. *Id.*
33. *Id.*, slip op. at 6.
34. 536 F. Supp. 2d 534 (D.N.J. March 6, 2008).
35. *Id.* at 543.
36. *Id.* at 539.
37. *Id.*
38. *Id.* at 540.
39. *Id.*
40. *Id.*
41. *Id.*

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