

Parentally Placed Students – What is Required?



At any time during a school year, school districts can expect a disturbing report from parents of students with disabilities, declaring their dissatisfaction with the education offered by the school and notifying the district of their unilateral decision to enroll their child in a private school. Most people would agree that it is a parent's right to seek the best possible educational setting for his/her child. But how ought districts respond when the parents advise that they expect the district to "pick up the tab" for the new (and likely expensive) educational setting? And what is the district's obligation when the parents want the district to pay for residential services in addition to education services? The Individuals With Disabilities Education Improvement Act ("IDEA") defines the parents' obligations and the appropriate district response.

In general, the law does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that district made a free appropriate public education ("FAPE") available to the child and the parents elected to place the child in such private school or facility. 20 USC §1412(a)(10)(C)(i). The decision regarding whether the school district offered FAPE during the child's public school enrollment is left to a court or hearing officer. 20 USC §1412(a)(10)(C)(ii). Yet, before the issue gets to that forum and upon notice from the parent, the district has a final opportunity to convince parents that it can provide an adequate education for their child.

Reminder:

For students at private placements – either because parents took the Autism or Jon Peterson Scholarships or because the student is placed through a settlement agreement – remember to calendar dates the team agreed to meet to review the IEP or plan for ESY, as applicable.

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continued

10-day Parent's Notice: The law requires parents to inform the IEP Team that they are rejecting the placement proposed by the district, state their concerns with the placement, and announce their intent to enroll their child in a private school at public expense during the last IEP meeting attended by parents prior to removing the child from the public school. However, doing so at the conclusion of the meeting leaves the impression that parents' minds were made up before the meeting began. For this reason, and recognizing that some parents may not feel comfortable making such a pronouncement in front of the team that worked with and educated their child, parents may alternatively give written notice to the district (i.e. superintendent) that they are rejecting the placement proposed by the district, including a statement of their concerns with the placement, as well as their intent to enroll their child in a private school at public expense. To comply with federal law, the notice must occur ten (10) business days before the removal of the child from the public school.

Should parents fail to notify the IEP team or the district as stated above, the court or hearing officer could limit the amount of any reimbursement. There are few exceptions to this notice obligation:

- a. The school prevented the parent from providing such notice;
- b. The parents had not received procedural safeguards to make them aware of the notice requirement;
- c. The parent is illiterate or cannot write in English; or
- d. Compliance would likely result in serious emotional harm to the child.

The District's Response: Once such notice is received, the district should immediately begin building its case to show how the district has provided, and can continue to provide, a FAPE for the child. Since the issue is not likely before an impartial hearing officer at this point, the district should provide notice (PR-01) to the parents, including the following:

- a. The district acknowledges receipt of parents' 10 day notice;
- b. The district rejects payment/reimburse of the private expense;
- c. A brief, yet specific and detailed, explanation of the student's progress to date and how the district-based placement and IEP confer an educational benefit for the child; and
- d. The offer to immediately convene the IEP team to meet with parents regarding their concerns.

Since time is of the essence, it is important that the team meeting occurs without delay. While the purpose of the meeting is to explain to parents that the district can offer a FAPE, the team should be prepared to hear and respond to concerns and suggestions offered by the parents. Moreover, if parents refuse to meet with the team after a meeting is offered, it is persuasive evidence for the trier of fact of the district's commitment to providing a FAPE for the child.

Residential Treatment: Occasionally, the 10 day notice may express the parents' desire for the district to pay for residential treatment as well as education services. Remember that a public school is solely required to provide for the education of a child and will not be found responsible for residential treatment costs absent a strong showing that the residential placement is necessary for the provision of FAPE.