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Learning Labs

Ten Common Complaints: Views from a Former Parent Attorney

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Chris Schulz grew up in Seguin, Texas and attended the University of Texas at Austin. He graduated with a degree in Journalism in 2003. Later, he graduated from the University of Kansas with a J.D. and Master's in Journalism in 2007.

From 2007-2010, Mr. Schulz worked as an Assistant Attorney General in the Texas Attorney General’s Office. In October 2010, Mr. Schulz worked at the law firm of Cirkiel & Associates where he practiced special education and juvenile law. In 2014 he joined the law firm of Richards Lindsay & Martin, LLP, where he now represents Texas school districts.
1. Child Find

Child Find claims were, undeniably, the most frequent complaint I received as a parent attorney. Some parents were frustrated that their child received 504 services but the school seemed to deny an evaluation for special education services. Other parents mentioned that the school said it was required to do RTI before considering an evaluation for special education. In one instance the parent asked for an early reevaluation to address reading issues and the school cited the need to perform RTI services for a student already identified for special education with a speech impairment.

Quick Fact
Since 2010, child find claims in due process hearings are successful 43 percent of the time.

Cases

Student v. Forney ISD, 066-SE-1013 (Hearing Officer Lockwood): Parent submitted a request for an evaluation on February 11, 2013. School declined the request, provided PWN, and recommended 504 services. However, by the end of the fourth six weeks, the student was in school for a short period of time, demonstrated a lack of motivation, was failing some classes and barely passing others. The student also failed the STAAR test. Hearing Officer found that the school should have initiated the referral by the end of the fifth six weeks.

Student v. Bishop Consolidated ISD, 147-SE-0313 (Hearing Officer Rubinett): Parent failed to indicate on enrollment forms that student received 504 services in prior school district. Student had trouble returning to school following a behavioral incident and the school was on notice that the child was receiving psychological services. Hearing Officer found that the failure to obtain all the information from the parent, along with the student's behaviors, caused a Child Find violation. However, the Hearing Officer reduced the award of compensatory services due to the parent's failure to communicate the information to the school.

Student v. Carrollton Farmers Branch ISD, 032-SE-1012 (Hearing Officer Carmichael): Parent requested an evaluation. School completed a review of student's pertinent information and declined to evaluate, but referred for a 504 evaluation. Student received good grades, good-to-excellent behavioral progress, and positively interacted with peers. Even without IDEA eligibility, the school offered accommodations and consultation with a behavior specialist. Hearing Officer found that the school complied with its requirements under Child Find as the school was under no duty to evaluate as the child did not require special education instruction.
Student v. Killeen ISD, 058-SE-1013 (Hearing Officer Bunton): Student passed all classes and never retained, but failed state math assessment. Student identified by school a couple times as “at-risk.” Student also placed on behavior contract, with which the student did not comply, and placed in DAEP for 45 days. Hearing decision does not indicate if or when the parent requested an evaluation. Hearing Officer found no violation.
2. Failure to Implement IEP

Quick Fact
TEA will sanction school districts if it determines that the school district is out of compliance with the federal regulations. In 2012, TEA issued 199 adverse findings against school districts. Of those findings, 50 were related to when IEPs must be in effect. 30 CFR 300.323. The second highest was definition of individualized education program with 14 adverse findings. 30 CFR 300.320. In 2013, TEA issued 144 adverse findings, 49 of which pertained to when IEPs must be in effect. The second highest was definition of individualized education program with nine adverse findings.

Cases

*Student v. Houston ISD,* Docket No. 038-SE-1012 (Hearing Officer Ramage): The parent expressed concern about the class size and the effect on the student from the beginning of the school year. According to the parent and the teacher, the student began exhibiting new behaviors that interfered with learning such as off-task behavior, eloping, screaming outbursts, tantrums, aggressive and self-injurious behaviors. However, the school did not specify the staff to student ratio in the IEP. The hearing officer found that the failure to include a specified staff to student grouping ratio affected the student’s behavioral and academic progress, causing a deprivation of educational benefit, and impeded the student’s right to a FAPE. The hearing officer also found that the teacher stopped providing progress reports and did not collect behavior data because “the class size affected the teacher’s ability” to compile this information.

*Student v. Santa Fe ISD,* Docket No. 129-SE-0213 (Hearing Officer Ramage): The parent asserted that the District’s failure to perfectly implement all accommodations is a *per se* denial of a FAPE. The teachers that they did not always timely notify her on the first day the student had a missing assignment due to failing to discover it immediately. However, the student was provided the full amount extended time for completion of assignments beginning on the day of notification. A party challenging the implementation of an IEP must show more than a *de minimus* failure to implement all elements of an IEP. The party must demonstrate that the District failed to implement substantial or significant portions of the IEP.
3. Confrontational Attitudes

The quickest way to ensure that a parent seeks the advice of an attorney is to have a bad relationship with the parent. If a parent feels that the ARD committee is not listening to concerns, making decisions without parental input, or stonewalling reasonable requests, that can easily turn into a due process filing against the district.

Quick Fact
Surgeons who had never been sued spent more than three minutes longer with each patient than those surgeons who had been sued. Levinson, et. al., Physician-patient communication: The relationship with malpractice claims among primary care physicians and surgeons, 277 JAMA, 553 (February 19, 1997).

Cases

Student v. Houston ISD, 038-SE-1012 (Hearing Officer Ramage): The parents and the District experienced conflict and lack of mutual trust since the student’s Initial ARD due to delays in evaluation and services, failure to provide speech services, parent requests for collaboration with private service providers, and the parent’s desire to maintain the student in a private home ABA program at District expense. The District denied the request to pay for an outside provider’s observation but an absolute denial contributed to further deterioration of the relationship of the parties. The hearing officer also found that the parent often has unreasonable expectations about classroom observations, resulting in limitations being placed on those visits.

Ultimately, the hearing officer found the parent’s complaints to be legitimate based on the teacher’s failure to collect adequate data and failure to provide adequate progress notes regarding the student’s IEP goals and objectives. This failure, along with the decrease in communication between the teacher and the parent showed a failure to collaborate with the parents as key stakeholders in the student’s educational program. The hearing officer also stated that when the student began to exhibit negative behaviors that impeded student’s learning, the District refused to allow direct consultation between the classroom teacher and the student’s private BCBA with whom the teacher had previously consulted. Instead, the District insisted that the consultation with the professional with the most experience with the student be filtered through another contracted BCBA, who would then consult with staff and provide training.

Student v. Richardson ISD, Docket No. 180-SE-0413 (Hearing Officer Lockwood): The hearing officer found that was a lack of understanding and communication between the school staff and Student’s parents. For example, school staff felt locked into implementing a reinforcement schedule they viewed as inappropriate. Student’s parents felt their concerns and suggestions were not seriously considered.
Student v. Beaumont ISD, Docket No. 205-SE-0413 (Hearing Officer Rubinett): The District's proposed plan for Student was developed and proposed to Mother without discussion with her. In fact, the Mother emailed the District prior to the April ARD with concerns and reflections from her observations at the school’s proposed placements, but no discussion took place concerning her e-mail. Private school staff attended the ARD and provided data in advance to BISD, but there was no effort by BISD to collaborate outside the ARD meeting by visiting the private school to observe or obtain additional data. Even in the critical task of transitioning Student back to BISD, Respondent did not collaborate to develop a realistic plan for Student that had a reasonable chance of success.
4. Truancy

From a parent attorney’s perspective, truancy cases were always easy to resolve. When parents called me to help with a truancy case, it was simply a matter of gathering the child’s education and medical records and working out a deal with the prosecutor. I never once had a trial. The problem for schools is that I would start digging through the child’s education to determine if the child was a special education student, whether the child should be a special education student, and if attendance is treated as a behavior that impedes learning. Many times that resulted in a due process hearing or request for mediation with the Texas Education Agency.

Quick Fact

In 2012, there were roughly 65,000 truancy cases filed in justice courts and 12,000 truancy cases filed in municipal courts. These cases make up roughly one-third of all Class C cases against juveniles.

Proposed Law

Senate Bill 1234, introduced in the 2013 Legislative Session, as originally proposed, repealed some of the criminal violations for truancy and adding a “progressive sanctions model.” The bill passed through the House and Senate but was ultimately vetoed by the Governor. The Governor’s office stated, “While these plans are meant to hold students accountable for attendance and behavior management, they do not track the child from district to district and are lost as a student transfers from one school to another, which is common for chronically truant students.”

Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT.

(a) A school district shall adopt truancy prevention measures designed to:
   (1) address student conduct related to truancy in the school setting before the student violates Section 25.094;
   (2) minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code; and
   (3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) As a truancy prevention measure under Subsection (a), a school district may take one or more of the following actions:
   (1) impose:
      (A) a behavior improvement plan on the student that must be signed by an employee of the school, that the school district has made a good faith effort to have signed by the student and the student’s parent or guardian, and that includes:
         (i) a specific description of the behavior that is required or prohibited for the student;
(ii) the period for which the plan will be effective, not to exceed 45 school days after the date the contract becomes effective; or
(iii) the penalties for additional absences, including additional disciplinary action or the referral of the student to a juvenile court; or
(B) school-based community service; or
(2) refer the student to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the student’s truancy.
5. Criminal Conduct

Like truancy matters, juvenile cases are, for the most part, easy to resolve without a trial, especially when compared to defending adults against criminal complaints. In the juvenile law system the courts seem to be interested in getting help, not only for the juvenile, but for the family as well. This includes connecting the family with mental health service providers and counseling services.

Quick Fact

According to the Texas Supreme Court, roughly 300,000 students each year were given citations for behavior considered a Class C misdemeanor, including disruption of class, disorderly language and in-school fighting.

New Law

In 2013, the Texas Legislature passed Senate Bill 393. The law prevents school police officers from issuing citations for misbehavior at school, excluding traffic violations. Officers can still submit complaints about students, but it will be up to a local prosecutor whether to charge the student with a Class C misdemeanor.

Texas Education Code Sec. 37.143. CITATION PROHIBITED; CUSTODY OF CHILD.
(a) A peace officer may not issue a citation to a child who is alleged to have committed a school offense.
(b) This subchapter does not prohibit a child from being taken into custody under Section 52.01, Family Code.

34 CFR 300.535 (b)(1). RELEASE OF RECORDS TO LAW ENFORCEMENT
An agency reporting a crime committed by a child with a disability must ensure that copies of the special education records and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

Eligibility disputes are always difficult. On one hand, the eligibility category should not make one difference in the child’s programming. There are generally two major eligibility complaints that I will divide into two categories. Both have one thing in common, however: autism.

Cases

R.C. by S.K. and D.H. v. Keller Indep. Sch. Dist., 958 F. Supp. 2d 718 (N.D. Tex. 7/31/13): Parent’s primary contention is that because the school did not accept the diagnosis of autism and instead classified plaintiff as ED, plaintiff’s IEP was not appropriately individualized and plaintiff was denied a FAPE. Indeed, plaintiff devotes a considerable portion of his brief arguing that he suffers from a disorder on the autism spectrum, that there was “overwhelming evidence” of autism, and that the school misdiagnosed the disability and refused to consider autism. The parent argues that the label of autism is important because, under Texas law, plaintiff would be legally entitled to additional services as a student with autism. The considered such services and strategies under the Autism Supplement, implemented many of them, and asked the parents specifically which additional services they wanted that the school was not providing.

Student v. Mabank ISD, Docket No. 229-SE-0412 (Hearing Officer Lockwood, 2012): Petitioner claimed that student should have been found eligible under AU instead of ED. “Student’s behavioral needs were sufficiently met through the school district’s IEP and BIP and student’s eligibility for special education services was never in question. The psychological also considered whether autism would be an appropriate eligibility classification for Student and determined it was not. This conclusion is supported, in part, by the IEE speech/language evaluation that concluded Student did not exhibit any pragmatic language deficits.”

In re: Student with a Disability, 113 LRP 8924 (SEA MT 02/01/13): A student was diagnosed with autism but the school classified the student with an Emotional Disturbance due to the student’s aggression and other emotional difficulties. The parent alleged that the parent did not consider the student’s prior diagnoses and should have classified her son as a student with autism. “We believe that the particular disability diagnosis affixed to a child in an IEP will, in many cases be substantively immaterial because the IEP will be tailored to the child’s individual needs. Consequently, while the IDEA intends that IEPs contain accurate disability diagnosis, we will not automatically set aside an IEP for failing to include a specific disability diagnosis or containing an incorrect diagnosis.”

The intellectual disability category creates a very sensitive issue for many parents who do not want to consider their child as having a cognitive impairment. It is a difficult discussion. Many of these children end up in a life skills placement and the parents feel that the placement is not the child’s least restrictive environment.

Cases

Student v. Klein ISD, Docket No. 102-SE-0113 (SEA TX 2013): Student was eligible for special education under OHI, orthopedic impairment, visual impairment, and speech impairment. The child had some features of autism. The student was originally placed in a general education classroom for science and social studies with a modified curriculum and in a special education resource class for math and English/language. After conducting additional assessments and an IEE, the district recommended placement in its special education program for all academic subjects and social skills. The parents disagreed but consented to a trial placement in the resource setting. The parent filed a due process hearing arguing that the proposed placement was too restrictive. The hearing officer found in favor of the school noting that the student’s general education teachers and resource teachers had to develop “a classroom within a classroom” to meet the child’s special needs by modifying the already modified curriculums and attending to him at all times to keep him on task. The student required intensive one-on-one instruction, reinstruction, and reinforcement.

Student v. Northwest ISD, Docket No. 009-SE-0911 (Hearing Officer Carmichael, 2012): Parent contended that if the Student were placed in the life skills classroom, the Student would come out “more autistic” than when student entered. The hearing officer found that the Student continues to mature and will continue to face student’s own unique cognitive challenges as student develops into adulthood. The proposed classroom – with the presence of classroom peers – will allow this Student to develop and practice needed skills.

Student v. Eagle Mountain-Saginaw, Docket No. 351-SE-0812 (Hearing Officer Carmichael, 2012): After the issuance of the Decision of the Hearing Officer in Docket No. 009-SE-0911, the Student left Northwest ISD and enrolled in Eagle Mountain-Saginaw ISD. When the Parent disagreed with the District’s proposed placement of the Student at a centralized classroom placement the Parent filed a due process complaint. The hearing officer granted a Motion for Summary Judgment in favor of the school district.
8. Money

It seemed that most clients came in inquiring about money damages in addition to their special education complaints. It is a tough discussion with clients to tell them that the frustration that they have felt does not always equate to financial reimbursement for their troubles.

Cases

*Estate of Lance by Lance v. Lewisville Indep. Sch. Dist.*, 743 F.3d 982 (5th Cir. 2014). Schools are not required to purge “their schools of actionable peer harassment” or engage in particular disciplinary action. The law does not require that schools eradicate each instance of bullying from their hallways to avoid liability. School administrators will continue to enjoy the flexibility they require so long as they are not “deliberately indifferent” to acts of student-on-student harassment only where the recipient’s response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.
9. Graduation Plan

Although not as frequent as other complaints, I heard plenty of instances where a parent complained that they were not informed about the graduation requirements. For some children in special education, their graduation track prevents them from obtaining a regular high school diploma.

Cases

*Student v. Leander ISD, Docket No. 006-SE-0913 (Hearing Officer Ramage)*: The primary issue in this case for the parent revolves around a request that the student be placed on a Recommended High School Program rather than a Minimum High School Program. Placement on a MHSP is mandated if a student's ARD Committee determines that a student requires a modified curriculum. 19 TAC §74.71(d). The parent complains that the District failed to provide prior written notice to him of its intent to place the student on a MHSP and modify the student’s curriculum. The student's records consistently reflect ongoing discussion and collaboration with the parents regarding the student's need for modified curriculum. Additionally, the evidence is that the District discussed the impact of the modified curriculum on the student's appropriate graduation plan. The student's records reflect an ongoing effort on the part of the District to explain the need for modified curriculum and address the parent's concerns regarding the student's graduation plan. Placement on the MHSP is mandated due to the student's modified curriculum.
10. Hearing and Speech Impairments

Although children with hearing and speech impairments did not make up the majority of my client base, their issues with the school districts sometimes were the most complex. There were non-verbal children that could hear but only communicated through sign language. The parents wanted these children to attend the Regional Day School for the Deaf. At the same time you can have parents that want their child placed in a regular classroom with an interpreter.

Cases

*K.M. v. Tustin Unified School District*, 725 F.3d 1088 (9th Cir. 2013): In the 9th Circuit, two students with hearing impairments wanted to show that their California school districts violated Title II of the Americans with Disabilities Act by denying their requests for word-for-word transcription services in the classroom. The court concluded that the districts' compliance with the IDEA did not necessarily demonstrate ADA compliance. The regulations implementing Title II require districts to ensure that communications with individuals with disabilities are as effective as communications with others. Moreover, school districts must provide auxiliary aids and services when necessary to provide equal opportunities to participate in district programs. The court indicated that districts need to look beyond the requirements of the IDEA.

*Student v. United ISD*, Docket No. 199-SE-0511 (Hearing Officer Craddock, 2011): The school filed a due process hearing asking that the hearing officer order placement for the child at the Regional Day School for the Deaf. The parent wanted the hearing officer to order placement at the Texas School for the Deaf. The hearing officer found that the placement in the Regional Day School was appropriate.