Fact or Fiction? Myths in Special Education Law!

Paula Maddox Roalson, Kelly Shook & Pam Kaminsky

Walsh, Anderson, Gallegos, Green, & Treviño, P.C.
Fact or Fiction?

Debunking the Myths and Urban Legends in Special Education

THE SEQUEL

Presented by: Paula Maddox Roalson, Kelly Shook & Pam Kaminsky

In Case You Missed It --

Scenes From Our Last Episode!

Fact or Fiction?

A paperclip is considered a dangerous weapon that can result in a removal of up to 45 school days regardless of whether or not possession is determined to be a manifestation of the child’s disability.
You have to allow a student with an emotional disturbance to play on the football team even though he does not follow the rules.
The nurse will be held liable for injuries to students with diabetes that occur during the school day.

Texas Education Code §22.051 – Texas Standards of Professional Nursing

A special education bus may be the child’s LRE, even if the parent contends that he would be fine on the general education bus if you provided him with a 1:1 aide.
Q&A on Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009)

Which leads us to...

Fact of Fiction? Debunking the Myths and Urban Legends in Special Education

The Sequel!

Fact of Fiction?

A 3-hour bus ride (round trip) is excessive and deprives a student of FAPE.

Fact or Fiction?

If a student with disabilities is absent more than ten school days, you may administratively withdraw the student from school.

R.B. Mastery Charter School, 61 IDELR 183 (3d Cir. 2013)
A Release of Confidential Information should be obtained when the parent brings a non-lawyer advocate, friend, or other person with them to an ARD meeting.

Family Education Rights and Privacy Act - FERPA

34 Code of Federal Regulations 99.30

The District should obtain a release of liability or hold harmless prior to implementing a reasonable accommodation as decided upon by the ARD committee.
**Hillsboro (OR) School District 1J, 59 IDELR 82 (OCR 2012)**

District was required to provide a 1:1 “qualified” aide for a student with autism in order to participate on the school’s mountain biking team.

**Fact or Fiction?**

District was required to provide a 1:1 “qualified” aide for a student with autism in order to participate on the school’s mountain biking team.

**Rim of the World Unified Sch. Dist., 114 LRP 16308 (SEA CA 03/10/13)**
District may not require parent chaperones for students with disabilities to participate in extracurricular activities (i.e. school dance).

Charlotte-Mecklenburg (NC) Schs., 113 LRP 18233 (OCR 02/13/13)

It is a manifestation of a student’s disability if he assaults another student for making fun of the disabled student’s mother.
The ARD committee may develop and implement a Behavior Intervention Plan without first completing a Functional Behavioral Assessment.
If a school allows a private daycare to operate out of its facilities without charge, the District is not responsible for providing equal access to students with disabilities under Section 504.

Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA)

It is best practice to accept a doctor’s note for homebound services, as long as the doctor has certified that four (4) consecutive or cumulative weeks of homebound services are required.

Fact or Fiction?

The District’s Board of Trustees must approve Resolution Session Agreements.

Fact or Fiction?

If an ARD committee determines that a service animal is not required for the provision of FAPE, the District does not have to allow the service animal into the school.

34 C.F.R. 35.136(a)

Fact or Fiction?

The Fifth Circuit found no “special relationship” between student and District that would create liability for student injury.
**Estate of Montana L. v. Lewisville ISD, 62 IDELR 282 (5th Cir. 2014)**

It is a reasonable accommodation for a teacher to build a fort in her classroom for a student with behavior issues.

**Wood County Schools, 62 IDELR 187 (OCR, 2013)**
All children in foster care must have a surrogate parent appointed.

Letter to Caplan, 58 IDELR 139 (OSEP 2011)

Emails are education records, and must be kept for five (5) years after the cessation of special education services.
It is appropriate for counseling services to be provided on an “as needed” basis.

*O’Toole by O’Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233, 28 IDELR 177 (10th Cir. 1998)*
Fact or Fiction?

- A District may adopt a private school’s IEP upon transfer into a public school.
- What if the private school placement was made by the District?

Beaumont Indep. Sch. Dist., 114 LRP 7471 (SEA TX 12/16/13)

Fact or Fiction?

- Once a parent refuses to consent to an evaluation, the District is dismissed of its Child Find obligation.
A Court required a District to serve a student with special education and related services, even though the student was incarcerated in an adult prison’s special unit for highly assaultive inmates.
Fact or Fiction?

The District is predetermining a student’s services if it meets prior to the IEP meeting and recommends removing a student’s 1:1 instructional aide.

Strongsville City Sch. Dist., 113 LRP 29340 (SEA OH 10/12/12)
Paula Maddox Roalson, a shareholder in the firm, is a graduate of Texas Lutheran College, where she graduated *summa cum laude*, and the St. Mary's University School of Law. Ms. Roalson previously served as the Staff Attorney for Special Education for the Texas Association of School Boards. She is a member of the School Law Section of the State Bar of Texas and TASB's Council of School Attorneys. Ms. Roalson is licensed to practice before the Fifth Circuit Court of Appeals and before the United States District Courts for the Northern, Eastern, Southern and Western Districts of Texas. She is a frequently requested speaker and has spoken at numerous workshops, seminars and conferences in the areas of general school law and special education. Additionally, she has written and/or presented many articles concerning education law for various school organizations. Ms. Roalson works in the firm’s Houston office.

***************************************

Kelly Shook is a 2008 graduate from the University of Texas School of Law. She received her undergraduate degree in Finance from the University of Texas at Austin, where she graduated with honors. While in law school, Kelly interned with the Texas Supreme Court for Justice Nathan Hecht and also served as a law clerk for the Texas Association of School Boards. Kelly worked as a school law attorney for five years prior to joining the Austin office of the firm. Kelly focuses her practice primarily on disability rights issues, and regularly attends ARD meetings and represents school districts in mediations and due process hearings regarding special needs students. Additionally, Kelly participates in dispute resolution for Office for Civil Rights and Texas Education Agency complaints.

***************************************

Pam Kaminsky received her undergraduate degree in 1994 from Sam Houston State University and after working in a litigation firm she attended law school at South Texas College of Law. Pam was introduced to the field of Education Law during law school, but after graduation in 2002 began her practice in the private sector. She quickly found her way back to Education Law though, and into public education by joining Fort Bend ISD as its Special Education attorney. Pam’s practice ultimately included all student issues -- general education, gifted & talented, 504, discipline, UIL matters, in addition to special education.