



Eligibility for Special Education and Related Services: It's Not All About The Grades!

By: Ira M. Fingles, Esq.

Students may be eligible for special education and related services if they have a disability that adversely impacts their learning – not just in academics, but in other areas as well. In making an eligibility determination, the local school district must use a variety of assessment tools and gather relevant information, including that provided by the child's parent. A district cannot use any single procedure or measure, including a student's grades, as the sole criterion for determining whether a student has a disability.

It is often wrongly assumed that students with good grades cannot be eligible for special education. In fact, many students have what is referred to as "invisible disabilities" that manifest in ways that are not related to grades at all, but still impact their ability to make meaningful progress socially, emotionally, developmentally and functionally. For example, some students with Asperger's syndrome may earn high grades in class, but have difficulty participating in group activities due to poor social skills and poor communication skills. Other students with emotional or behavioral disabilities, such as depression or bipolar disorder may get good grades, but struggle with life skills, self-regulation, organizational skills or coping skills. Others may have difficulty sustaining attention for extended periods of time, have school refusal issues, and/or disruptive or oppositional behaviors.

These non-academic skills must be considered when exploring whether a student may be eligible for special education. If a student is unable to learn these skills through the general education curriculum, the student may be eligible for special education and related services under the Individuals with Disabilities Education Act ("IDEA").

Last December, the New Jersey Department of Education issued a memo to School Superintendents regarding students whose disabilities do not impact on learning in every subject. They emphasized that, for such students, goals and objectives must address "...other skill areas, including but not limited to social skills, communication skills, organizational skills, study skills, self-regulatory skills, transition skills, etc. in response to the individual student's needs."

If a student is suspected of having a disability as a result of physical, sensory, emotional, communication, cognitive or social difficulties, a teacher or parent can request that he or she be referred to the Child Study Team (CST) to be evaluated



for special education services. Once the parent provides consent, the CST has 60 days to complete the evaluations and must hold an eligibility conference within 30 days thereafter. A student who is deemed eligible for special education and related services is entitled to an individualized education plan (IEP) that providing specially designed instruction, including modifications and accommodations, and related services, such as counseling and social skills instruction, designed to address the student’s unique needs and to enable him or her to make meaningful progress in the curriculum.

It is important to note that student with “invisible disabilities” and disabilities that do not affect grades are eligible for the same range of placement options - including inclusive settings, private special education schools and residential placement - as all other students with disabilities. The placement is determined by a team, which includes the parents and, the student, if he or she is age 16 or over. If there is a dispute about the eligibility determination or whether the IEP, including placement, is appropriate, special education laws provide parents with due process procedures to challenge the decisions made by the district. If parents are successful, they may be entitled to reimbursement of attorney’s fees.