



Parents' Connection

Your Child's Placement: Understanding the "Stay Put" Rule

By **S. Paul Prior, Esq.**

As we approach the time of year when most schools begin to review and prepare IEPs for the next school year, there is an increased likelihood that school districts will attempt to change your child's program or placement. Placement decisions are made by the IEP team, which includes the student's parents. A school district cannot unilaterally move a child out of his current placement against the parents' wishes. Placement decisions must be made on an individualized basis and cannot be made to conform with prescribed numbers or percentages of students in certain types of settings and cannot be based on the cost of the particular placement or program provided. In fact, to do so is a clear violation of the federal Individual with Disabilities Education Act ("IDEA").

It is essential that parents act quickly if their school district provides written notice changing the student's placement. Otherwise, unless a very limited exception can be used, the student's placement will change regardless of whether the parents agree with the decision or refuse to sign the IEP.

If a disagreement arises between the district and the parents regarding a student's placement, the IDEA requires a student remain in his or her current educational placement during any legal review of the disagreement. This rule is called the "stay put" or "pendency" provision of the IDEA.

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ASAHA's Annual Conference

ASAHA's 33rd Annual Conference is set for November 13, 2009, Atlantic City, New Jersey. The theme of this year's conference will be "Opening the Door to Success." For more information, log on to www.asah.org.

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Dear Parents:

Spring is here, and so is IEP season. Across the state, districts and parents are meeting to design the individualized plan of instruction designed to carry more than 270,000 students with disabilities in New Jersey through the 2010 school year.

The federal law requires all members of your IEP team to be present at your IEP meeting. This means that the team **MUST** be able to make all decisions about a student's program and placement. There should **NEVER** be a reason to get outside review or approval by the County office, or any other office for that matter.

But this year, parents are telling us something very troubling. Across the state, parents have been told that that their child's private school placement either cannot be made, or, must be approved by the County office.

This practice is illegal and results from a misrepresentation of new statewide rules for fiscal accountability that were put into place last winter.

As a parent, you need to know...

The new code language does NOT require any approval from anyone or any office outside the Child Study Team.

In fact, in early January, the Commissioner of the Department of Education, Lucille E. Davy, sent a memo to school administrators and business officials in which she writes:

"[T]he ECS's role is only to provide information on available in-district options for the consideration of the IEP team. Only the IEP team can make placement decisions for students with disabilities."

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In a letter she wrote to ASAH and other concerned groups, she states:

"The Executive County Superintendent has been given no authority to approve or disapprove any placement for an individual student. This remains solely the responsibility of the IEP team."

As advocates for students with disabilities, ASAH believes it is vital to reach out to you directly at this time, since so many IEPs are now being reviewed. We have taken aggressive action in Trenton to get these rules repealed and rewritten so they are clear. But until that time, we wanted to be sure that parents are aware of this very important clarification. We urge you to share this information with your child study team members.

And, if you are told, directly or indirectly, that your child's private school placement has to be reviewed, or cannot be maintained for ANY reason, please call our Parent Assistance Line, at 877-287-2724, IMMEDIATELY. There are important timelines that must be honored, and time is of the essence, if your child's placement is to be preserved.

Gerry Thiers, Executive Director

The stay put rule allows consistency in a child’s program and placement while the disagreement is addressed through the various appeal processes. This assures that a child’s placement will not be altered, only to find later that the district’s proposed placement was inappropriate.

Before any change in student’s placement can occur, parents must be provided with fifteen days written notice, often in the form of a revised IEP. If the parents do not take any action within fifteen days, the district’s proposed change in placement will take effect. However, if the parent files for mediation or a due process

hearing, the student must remain in his or her current placement. Any changes in the type of class, the school, the frequency and duration of related services, and similar changes are considered a change in placement.

It is essential that parents act quickly if their school district provides written notice changing the student’s placement. Otherwise, unless a very limited exception can be used, the student’s placement will change regardless of whether the parents agree with the decision or refuse to sign the IEP.

Paul Prior is a partner at Hinkle, Fingles & Prior. The firm has offices in New Jersey in Paramus, Florham Park, Lawrenceville and Cherry Hill; and in Pennsylvania in Bala Cynwyd and Plymouth Meeting. The firm’s attorneys have argued many of the precedent setting cases affecting people with disabilities in New Jersey and Pennsylvania. Contact the law office at 609-896-4200 or 215-860-2100.

IEP season is coming up! Review this checklist to make sure you are prepared!

- When was the last time your child was evaluated? Was it within the last 3 years?
- Have you reviewed your child’s current IEP recently?
- Are the IEP goals measurable?
- Has your child mastered his/her goals? If not, why not?
- Does your child need a behavior intervention plan?
- Can your child communicate? Does he/she require speech and language therapy?
- Can your child generalize the skills used in school into the home and community environments?
- Is your child organized?
- Does your child remember to complete homework?
- Does your child require an extended school day or extended school year?

Plan early for your IEP meeting and make sure that you are prepared to address any concerns you may have. Getting advice about the law, and yours and your child’s rights and responsibilities early in the process can help you develop appropriate strategies to support your child’s educational rights.

Profile of Success: Githens Center

Githens Center's mission is to provide quality educational and therapeutic programs for people with disabilities and support their families; provide an environment that fosters confidence, and dignity, and; provide the opportunity for people with disabilities to develop to their maximum potential.

Githens Center (Burlington County Cerebral Palsy Association) was established in 1951 under the leadership of Helen Githens, a parent from Vincentown, and Dr. E. Vernon Davis, an orthopedist. The group was originally organized to improve the welfare of individuals with cerebral palsy. In May 1951, the first Diagnostic Clinic was held with six individuals screened. Through the untiring efforts of the founders, and many others including Virginia Alwine and Kate G. York, the current executive director, Githens Center has developed into its present status of excellence.



Githens Center student, Tysai, assisted by Speech Therapist Linda Paul, leads Sam's Clubs Good Works Breakfast attendees in reciting the Pledge of Allegiance using an augmentative communication device.

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