

# Starting a New IEP Advocacy Year: Back to School Tips

by Lisa Krizman, Esq.

*Lisa Krizman shares tips about advocacy supplies, monitoring progress, and catching up on legal developments in special education.*

## **"Back to School" Supplies for Parents**

(1) *New spiral book.* Get a new spiral notebook to document incidents concerning your child at home and at school, and conversations with the school and professionals. Start by documenting how your child did over the summer, which is important if you plan to ask for an Extended School Year. Keep this book handy (in the kitchen, for example).

(2) *New very large folder.* Get a folder in which you can toss all school work and notes your child brings home for that year. This can be very important for you to evaluate and monitor and document the child's progress during that year, and from year to year.

(3) *New loose-leaf book:* Use this to file IEPs, the latest Parental Rights book from your state Department of Education, notices, emails, official reports to and from school and doctors/therapists. Remember that your requests to the Child Study Team *must* be in writing in order to initiate certain procedural protections.

**Update the School Nurse.** You may want to disclose medication status and changes.

**Educate the New Staff.** Initiate friendly contact with the child's new teacher, aide and therapists to describe how to best handle your child.

**Monitor Progress.** Watch the progress of your child on a regular, periodic basis and report your concerns early to the teacher and your Child Study Team Case Manager. Don't assume your child *is* progressing during the year. And, *don't wait until the annual IEP meeting to find out.*

Check up by Private Specialists. To whatever extent you can afford it, have your child periodically examined/treated by your own team of therapists and specialists. If you are concerned about the upcoming school year, it may be helpful to get a "baseline" picture of your child at the start of the year. Judges generally give much greater weight to an expert who has treated your child over time than a specialist who is brought in to give a report for the purpose of litigation.

**Catch up on new legal developments in special education.** Here are some noteworthy developments since the beginning of January 2009, and some older useful cases:

(a) [Forest Grove School District v. T. A.](#) On June 22, 2009, the U.S. Supreme Court ruled that the Individuals with Disabilities Act ("IDEA") authorized reimbursement to parents for the cost of private special education school when a school district fails to provide a free appropriate public education ("FAPE") and the private school placement is appropriate, regardless of whether the child previously received special education or related services through the public school. In this case, the District had evaluated the child but found him not eligible for special education services, and the parents unilaterally placed the child in a private school. Most notably, the Court noted that the IDEA review process is "inadequate to ensure that a school's failure to provide a FAPE is remedied with the speed necessary to avoid a detriment to the child's education" and also that IDEA may be interpreted "permissively" to allow reimbursement awards.

(b) *R.K. v. Y.A.L.E. Schools*. It seems that more parents are facing allegations of child abuse by school districts in alleged retaliation for advocacy. An October 2008 case in New Jersey would not dismiss the parent's claim of civil conspiracy among teaching staff. Then in April 2009, the Court issued a further opinion relating to the parents' claim for intentional infliction of emotional distress.

(c) [JP v. School Board of Hanover County](#) In February 2008, the Court of Appeals for the Fourth Circuit reversed and remanded the case back to the District Court to determine if the 2005 IEP provided FAPE.) In December 2008, the U.S. District Court issued a new decision in [JP v. School Board of Hanover County VA](#) (E.D. VA 2008) and found that the "State Hearing Officer's decision was not consistent with the record, taken as a whole, that HCPS did not provide JP with a FAPE during the 2005-2006 school year because it did not proffer an IEP that was reasonably calculated to provide JP with an educational benefit." That IEP was "essentially identical to the 2004 IEP that failed to provide educational benefit, and because HCPS failed to implement material portions of the 2004 IEP."

(d) [Arlington v. Murphy](#). In June, 2006, the U.S. Supreme Court held that parents can not recover the cost of experts who testify in due process hearings even if they prevail. However, in July 2009, the IDEA Fairness Restoration Act, H.R. 2740, was introduced to make it mandatory for districts to reimburse prevailing parents for expert fees in due process and further proceedings.

(e) [Henrico School Board v. R.T.](#) In June 2006, the Eastern District of Virginia issued a favorable decision regarding tuition reimbursement to parents for placing their autistic son into private school based on the school district's knowing and repeated failure to provide an appropriate education. The Court criticized the School District for "inertia" and found the District's attempt to avoid tuition reimbursement as "unconscionable."

(f) [Schafer v. Weast](#). In November 2005, the U.S. Supreme Court held that the burden of proof is on the party bringing the litigation, but declined to address that a state could, by statute, place the burden exclusively on the school district.

Since at least one state has already passed legislation to make this so, check your current state laws.

## **New Federal Requirements**

On December 1, 2008, the [U. S. Department of Education issued additional Part B regulations](#) in order to clarify and strengthen current federal regulations regarding parental consent, hearing rights, state monitoring and enforcement, etc. The following information contains excerpts of the [new federal requirements](#) in effect as of December 31, 2008. A copy of the revised federal regulations is available at <http://www.wrightslaw.com/idea/law/FR.v73.n231.pdf>.

### ***Revocation of Parental Consent (§§300.9 and 300.300)***

34 CFR section 300.300(b)(4) has been amended to add that if the parent of a student with a disability revokes his/her consent in writing for the continued provision of special education and related services to the student, at any time subsequent to the initial provision of special education and related services, the school district:

- may not continue to provide special education and related services to the student, but must provide prior written notice to the parent before ceasing the provision of special education and related services;
- may not use due process procedures (i.e., mediation, resolution meeting, and/or an impartial due process hearing) in order to obtain agreement or a ruling that the services may be provided to the student without parental consent;
- will not be considered to be in violation of the requirement to make a free and appropriate public education (FAPE) available to the student because of the failure to provide the student with further special education and related services; and
- is not required to convene an individualized education program (IEP) meeting or develop an IEP for the student for the further provision of special education and related services.

The definition of consent in 34 CFR section 300.9 has also been amended to add that if the parent revokes consent in writing for his/her child's receipt of special education and related services after the child is initially provided special education and related services, the school district is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

### ***Representation by Non-attorneys in Due Process Hearings (§300.512)***

34 CFR section 300.512(a)(1) has been amended to add that the decision as to whether parties (i.e. parent and school district) have the right to be represented by non-attorneys at due process hearings is determined under state law.

***State Monitoring, Technical Assistance, and Enforcement (§300.600, 300.602, and 300.606)***

34 CFR section 300.606 has been amended to require states to provide public notice of any enforcement action taken by USDOE against the state and that each state's public notice of enforcement actions must include, at a minimum, posting the notice on the state's web site and distributing the notice to the media and through public agencies.

From: **MOTHERS AT LAW® Back to School Tips**

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