

## **Guidelines -- Parental "Rights" To Classroom Visitation**

As a general rule, no parent has a "right" to visit his/her child's classroom. The only exception to this general rule is that, as a part of an evaluation or reevaluation of an eligible (exceptional) child, a parent may require observation on a reasonable basis by a professional designated by them. The purpose of such an observation, however, is not to observe the classroom that the student is in. Rather, such an observation is for the purpose of observing the child within that environment.

The United States Department of Education's Office of Civil Rights has held that no requirement exists in federal law that would require classroom visitations as a part of special education due process procedures. OCR's rulings on this issue, of course, relate to Section 504 of the Rehabilitation Act of 1973. The requirements, however, of the IDEA have been interpreted no differently. The recent amendments to the IDEA have not changed the requirements of federal law on this point. As was observed recently in an Oregon SEA decision, *see, Hillsboro Sch. Dist.*, No. DP 99-102, 4 ECLPR ¶ 117 (June, 1999), the IDEA insures that parents will be able to participate in meetings and that they will be able to be accompanied by experts, and nothing in the IDEA insures that parents will be able to participate in discovery like tactics on school grounds during school hours. A copy of the Oregon decision is attached. Reference to Appendix A of the new federal regulations, which extensively discuss parental IEP rights, yield no different results. In the absence of some express authority for the proposition that an observation is allowed, observations must be deemed to be at the discretion of the district.

At the state level, the following is a quote from Samuel R. Bashore, Chief of the Division of Regional Review, Department of Education, to a June, 1986 response to the Education Law Center:

Your letter is correct in concluding that neither state nor federal law give parents the explicit right to observe a proposed special education placement before the parents agree to that placement for their child. I do not find any language in state or federal special education law that reasonably supports your conclusion that this right is implied in law to be part of parent involvement in the decision process regarding either an initial placement or a proposed change in placement.

Federal and Pennsylvania special education regulations do accord parents attending their child's preplacement IEP conference the right to meet with their child's teacher and the LEA supervisor. 34 CFR Section 300.344; 22 Pa. Code Section 341.16. If the parents need a description and an explanation of the proposed placement and program, it can be sought at the IEP conference. Based upon that description and explanation, any questions the parents may pose at the conference, and any modifications that the parents may wish in the IEP, the parents may decide whether to agree to a proposed placement. This IEP conference process, along with parent review of the child's education records and evaluations, appears to be the mechanism that the law intends for parents to use in making informed decisions about their child's proposed placement. I cannot agree that this mechanism necessarily includes visits to the child's proposed classroom while it is in session.

On the general issue of classroom visits and observations, there is nothing in the Public School Code, State Board of Education regulation, or PDE standards which gives a parent the right to visit or observe a classroom, regular education or otherwise. Whether parents may visit their child's classroom while in session is a matter governed by whatever policies have been adopted on this subject by the district board of school directors.

Most Districts that nonetheless allow visitations severely restrict such access, if they allow it at all. There are a number of reasons why most Districts strictly limit parental visitation. Principal among these are privacy rights of other children who are present in the classroom. Other reasons are that parents are generally not trained educators, their presence can interfere with student discipline and professional evaluation, and liability concerns. Of additional concern to Districts is the issue of direction and control. A parent who is present in a classroom is not under the direction or control of the classroom teacher, his/her supervisor, the administration, or the Board. Thus, if an untoward incident occurs, there is no ability to discipline or otherwise hold the parent responsible. Finally, in this post-Columbine era, security is an issue. Many districts today actively discourage an environment in which it is usual to see strangers in the schools.

A quick review of recent OCR and state SEA decisions turned up numerous decisions that are in accord with the above principles, the most succinctly stated of which is a Washington State decision, *In re David M.*, 507:488 IDELR (1986). Other decisions supporting the principle that classroom visitations are discretionary with the District and not subject to the jurisdiction of a special education hearing officer are *Pittsfield (MA) School District FAPE*, 352:62 IDELR (OCR 1985); *Lake Bluff Sch. Dist. 65 (Visitation/Procedural Safeguards)*, 29 IDELR 915 (OCR 1998); *Kent (WA) Sch. Dist. No. 415 (Retaliation)*, 29 IDELR 914 (OCR 1998); *School Dist. of Philadelphia (PA)(Retaliation)*, 24 IDELR 1188 (OCR 1996); and *Edwardsburg (MI) Pub. Sch. Dist. (Due Process)*, 16 EHLR 100 (OCR 1989).

It must be noted that some of the decisions above-cited suggest that a part of an *evaluation* in a particular case may necessitate a visit by a professional for the purpose of observing the child in his/her environment. This might be necessary in a particular case in order to assure that an evaluation is appropriate. However, this should never form a basis for allowing visitation of *proposed* placements.

If the Congress of the United States or the Pennsylvania Legislature had envisioned that a situation could arise where it would be necessary to allow a parent into the classroom in order to provide a FAPE, there would be regulatory or statutory authority for the same. Instead, all explorations of this issue, including an extensive review of Federal caselaw, have concluded that such authority does not exist.

The only exception, offering a contrary conclusion, was set forth in “*In Re the Educational Assignment of Michael C., a student in the United School District*”, *Special Education Opinion No. 337 (1988)*. In this Appeals Opinion, former Secretary of Education Thomas K. Gilhool, without citing any authority for his ruling, held that the parents were entitled to visit *their child's class* to observe instruction so that they can participate more knowledgeably in the development of their child's IEP.

Secretary Gilhool's decision is not totally out of line with the concept that, in the case of an evaluation, it may be necessary for a professional to observe a given child in his or her class setting. It, however, lacks any legal basis for its conclusion that a parent has a right to observe classes generally. Certainly, it cannot be cited for the proposition that a parent has a right to observe a class or classes that a child is proposed to be placed in.

Additionally, Secretary Gilhool's opinion in *Michael C.* may no longer be cited as controlling authority in support of the argument that parents are entitled to visit their children's classrooms following the Courts' rulings in *Muth V. Smith*, 646 F. Supp. 280 (E.D. Pa. 1986) and *Muth v. Central Bucks School District*, 839 F.2d 113, 130 (3<sup>rd</sup> Cir. 1988), *rev'd on other grounds sum nom.*, *Muth v. Delmuth*, 491 U.S. 223 (1998) (quoting *Hensley v. Eckerhart*, 461 U.S. 424,433, 440 (1983))

The *Muth* decisions collectively held that the "Secretary of Education of Pennsylvania (Gilhool) is an employee of the "state educational agency," and as such, may not review a decision of a hearing officer in an initial due process hearing on appeal." *Muth, Supra*. Accordingly, the Courts' decisions in the *Muth* cases effectively serve to invalidate and overturn any Appeals Opinions issued by the Pennsylvania Secretary of Education. Therefore, Secretary Gilhool's decision in *Michael C., Id.*, is no longer controlling or binding in the area of parental visitation of classrooms.

In conclusion, parents have no "right" to visit classrooms under Section 504, the IDEA, or the Pennsylvania Public School Code. In the absence of a statutory basis, such a right can only be conferred at the discretion of the local district.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.