

## **PARENTAL REFUSAL TO CONSENT TO INITIAL SPECIAL EDUCATION PLACEMENTS**

Until a few years ago, school districts across the Commonwealth expressed concern about whether they may proceed to a special education due process hearing when parents refuse an initial offer of placement in special education. As recently as 2002, the Pennsylvania Department of Education regulations allowed school districts to request an impartial due process hearing in the event a parent rejected an initial program and placement for a student in need of special education services.

However, in 2001, the United States Department of Education, Office of Special Education Programs (OSEP), addressed the issue of initial placement and a district's ability to request a due process hearing. In an opinion letter, Patricia J. Guard, Acting Director of OSEP, advised that "the [Individuals with Disabilities Education Act (IDEA)] does not permit public agencies to initiate a due process hearing if a parent refuses to consent to the initial provision of special education and related services." *Letter to Cox*, 36 IDELR 66 (2001). The same opinion letter also states that any state statute or regulation inconsistent with this opinion must be revised in order to comply with the IDEA requirements. In 2003, the Pennsylvania regulations were revised to reflect the finding in *Letter to Cox*.

The 2004 amendments to the IDEA codified the finding in *Letter to Cox*. Specifically, if a parent refuses to consent to initial services for a child found eligible, districts shall not pursue initiation of such services through due process and shall not provide special education services to that child. 20 U.S.C. § 1414(a)(1)(D)(ii)(II).

Despite the foregoing, districts also must be aware that in the event a parent does not provide a district with consent for an initial evaluation of a child thought to be eligible, or the parent fails to respond to a request to provide consent, districts still may pursue the initial evaluation of the child by utilizing the due process hearing procedures found under the IDEA.

In light of the new language in IDEA '04, school districts need to be aware of what to do when a parent disagrees with an initial offer of placement. Specifically, when a parent clearly rejects a proposed program and placement, based not on the type of program offered, but instead on the fact they do not want their child provided special education services, a district may not proceed to due process. However, if a parent agrees with the district's initial evaluation and a determination that the child is in fact eligible for special education services, a district may proceed to request a due process hearing if the dispute centers on the type of program to be provided the student.

Ultimately, it is very important that districts and their IEP teams ascertain the parents' motivation and intent for rejecting an initial program and placement. Are the parents rejecting the proposed program based on a disagreement of what the program should entail, or are the parents rejecting a district's offer based on the fact they do not want their child to receive any special education services?

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.