



LAWYER ON BOARD

Special
education law
a booming
field

BY ALEJANDRA NAVARRO

Second-year law students Margaret Mary Aiken and Chris Smedick knew time was running out. Their client, a high school student diagnosed with several mental disabilities, had little time to receive educational services under the Individuals with Disabilities Education Act, or IDEA. At 21, he would no longer qualify. As advocates from the School of Law's Civil Clinic, the duo joined him and his mother at a meeting with school district officials to get educational services that could better advance his skills—and quickly.

At first, school officials resisted. They suggested allergies might be at the root of this student's learning problems. They also said the student did not show an interest in learning. The student's mother knew from the abilities he demonstrated at home that he was capable of more than what was listed in his individualized education plan, which hadn't been updated in five years.

Aiken and Smedick persuaded the school district to re-evaluate the student and revise his plan. But all of this takes time—up to 45 days.

"That's a quarter of the school year," says Smedick, who noted that each day without these resources chips away at the progress his client could be making. Still, the mother said it was the most productive meeting she has had with school officials.

Planning and placement team meetings were not designed to include lawyers. As parents and school officials often clash over how best to educate students with special needs, lawyers have become regular attendees at such meetings and special education law has become a booming field.

About seven million students in the U.S. are diagnosed with disabilities, such as ADHD and autism, and receive services through IDEA. This is about two-thirds more students than when the law was cre-

ated in 1975. Cash-strapped school districts are trying to fund the cost of learning resources now available to educate these students. Adding to the complexity is the challenge of deciphering between behavioral problems and disabilities, which has left some children with special needs without services or vulnerable to discipline under zero tolerance policies.

IDEA is straightforward: school districts must provide a "free and appropriate public education" for all youths with disabilities from age 3–21, explains Dahlia Grace, visiting clinical instructor who teaches in the clinic. She also is a lawyer with Connecticut Legal Services.

"It's an individualized program that is tailored to each child's needs," Grace says. "Each child may need different resources and we may not know what will work."

For example, learning in small group instruction might work for one child with autism, but another child with the same diagnosis may need one-on-one tutoring.

Many school districts work hard to provide effective special education services, says Kevin Barry, an assistant professor of law who oversees the civil clinic.

The clinic, however, has represented clients in cases where school districts appeared to have ignored the law. In one case, school officials refused to evaluate a kindergarten student to see if she was eligible for special education services even though she was failing and she had received services at a previous school. School officials said the student was having problems adjusting to the new school. The clinic staff has since provided school officials with the student's educational records, and is hopeful that it will spur the school to evaluate the child.

"Some schools are reluctant to let students in the door under IDEA," Barry says. "It's like school officials are saying, 'We know you've got this nice law, IDEA, that

says if your child is eligible, you can get these services, but we're not even going to evaluate the child to determine if the child is eligible. It *is* eye-opening."

Erin Duques '05 was surprised to hear about these specific incidents because districts are required to review a student's education plan at least once a year. She was a lawyer with Shipman and Goodwin, which represented about 80 percent of the state's school districts.

"In my experience, I came across many school personnel who worked tirelessly to make sure the needs of students were met," Duques says. "They come up with creative ways to accommodate the child's learning abilities."

Duques says she advised the districts she represented to conduct an evaluation if the parent or school personnel request it, unless there is a good reason not to; for example, if the parents want a child retested to get different results.

If parents and the school district lock horns over the education plan, they can go to mediation. The next step would be to submit a due process complaint to a state education officer for review. Of the 258 due process complaints in Connecticut in 2007, 185 were resolved without a hearing. In rare instances, the case is appealed in federal court.

Parents are put in the position of enforcing the law. At team meetings, parents face numerous school administrators and experts to discuss progress and goals, which can be intimidating, says Aiken. The education plan document can be complex and difficult to understand.

"Our client went along with what school officials said because she thought they had the best interest of her son at heart," says Aiken, who adds that the parent should be an active participant in the planning meetings, and lawyers can bring the parent back into the process.

Price of education

Today, there are many methods and programs for special education students. School districts facing shrinking budgets are trying to implement those that are effective.

“Parents are much better educated about what they are entitled to and are aware of many of the things they can request,” says Howard Klebanoff, a lawyer with Klebanoff & Alfano, P.C., and one of the state’s most distinguished special education lawyers. Klebanoff said that parents are entitled to appropriate special education services, and that the lack of funding in most cases cannot be used as an excuse in providing the necessary program based on the child’s individual needs.

IDEA is woefully underfunded, says Klebanoff, who helped write special education state laws when he was a state representative.

“I have said since the very passage of both the state law and the federal law that the lack of sufficient funding from the state and federal government is one of the biggest obstacles for both school districts and parents to overcome in providing appropriate programming, services and placement to children,” he says.

The government was supposed to cover 40 percent of the cost of special education, which is in the billions, but typically covers about 17 percent. The cost of special education—from specialists and training to equipment—is growing. One out-of-district placement, which happens when a district cannot provide the services the child needs, can run into the tens of thousands of dollars each year. Klebanoff cautions the wealth of a school district may not dictate how much it spends on services or whether the district will accommodate parents’ wishes.

“The law says school districts are entitled to choose what method, [however] the program offered has to be appropriate to the needs of the child,” says Jennifer Laviano ’96, who has a firm specializing in special education in Sherman, Conn. In some cases, school officials complain that some parents make unreasonable and expensive requests.



Dahlia Grace, standing, visiting instructor in the Civil Clinic, reviews a special education case with, from left: students Margaret Mary Aiken, Christopher Smedick and Paul Gieri.



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“The cases say the school districts have to provide a Chevy, not a Cadillac. I say the Chevy has to have an engine,” Laviano responds.

Parents often turn to Laviano when school officials reject their requests for services or for placement at a private school with more resources. Laviano advises her clients to give proper notice to the school district, but to pay for the services and request a reimbursement, so the child does not miss out on instruction. Not all parents can do this.

Complex diagnosis

In special education it can be difficult to differentiate between bad behavior and behavior that is a result of the child’s disability. Emotionally disturbed teenagers present one of the most serious and increasing problems in special education law, says Klebanoff. Many school districts often claim that the child’s needs are “non-educational” or the result of issues in the home and, therefore, are the responsibility of other agencies, he says.

“Likewise, many emotionally disturbed children require residential placements which are very costly and, therefore, strongly opposed by boards of education,” he says. “Connecticut has never really adopted an interagency agreement, which would require all the appropriate state agencies to share in the cost of these types of placements. The unfortunate result is the parents often face serious emotional and financial expense in order to obtain an appropriate program for the emotionally disturbed child, particularly teenagers.”

In *Forest Grove School District v. T.A.*, the Supreme Court ruled in June 2009 that a student who had never been enrolled in a special education program could receive reimbursement for private school. The Oregon school district evaluated the student and determined that he was not eligible. A private evaluation produced different results and the parents placed the student in a private school. The court sided with the parents, finding that the district did not adequately evaluate the student.

The case may encourage districts to evaluate students more carefully—and also to over-identify students, Duques explains. Students unnecessarily placed in special education services may not flourish in that restrictive environment, and it uses the school’s limited resources. If school officials had found the student eligible for special education, the district would have had an opportunity to defend the plan it had provided the student, Duques says.

If behaviors are interfering with the ability of the student to access education, there should be an evaluation and a behavioral plan in place if necessary, she says.

“You’re dealing with complex laws and you’re dealing with people and different personalities,” Duques says. She has witnessed parents harass school districts—one parent drove up a district’s costs by filing and withdrawing complaints several times. Typically, if the district loses in court, it pays for the parent’s legal fees, but parents usually do not have this obligation. In March 2009, for the first time in the state and one of the only decisions in the country, a judge required a parent to pay for the Stamford Board of Education attorneys’ fees for knowingly filing frivolous IDEA claims to harass the district.

“Despite how difficult it is to work with some parents, school districts still strive to meet their legal obligations to students,” says Duques.

Even well-intentioned parents sometimes ask for more than what is realistically attainable.

“Sometimes parents are in denial about their child’s abilities,” Laviano admits. She has had conversations with parents about their expectations for their child.

She sympathizes with parents who are stressed and grappling with a child who has special needs. “There are days when I will go home and cry after working with parents who are at their wits end,” Laviano says. “They are so emotional and desperate to help their kids. It’s heart-breaking sometimes.”

The possibility of helping these families keeps her in the field.

POWER OF ATTORNEYS

Working in the School of Law’s Civil Clinic, law students Paul Gieri and Margaret Mary Aiken helped a high school

student with special needs convince school officials to add a specific vocational program to his individualized educational plan even though they wanted to use another program.

“I felt like had we not been there, the meeting would not have gone the way it did,” says Gieri. In the clinic, law students put their legal knowledge to work providing free services to low-income clients.

“We are a living, breathing, functioning law office here at the law school. They are working on cases that affect peoples’ lives,” says Kevin Barry, assistant professor of law. He oversees the clinic, one of the school’s six legal clinics.

The students handle every aspect of a case, including representing clients at negotiations and hearings before judges and other adjudicators. Students represent a variety of clients from parents with child support claims to day laborers trying to recover unpaid wages. In seminar, students use these cases as vehicles for learning.

“Our clients are fighting every single day. What little we can do to help them is really rewarding,” says Aiken.

With the help of her staff, Patricia Kaplan, executive director of New Haven Legal Assistance Association and a visiting professor at Quinnipiac last year, refers cases to the Civil Clinic. The Stamford Day Laborer Clinic, part of Connecticut Legal Services, also refers cases.

The school also has partnered with NHLAA and the Hospital of Saint Raphael to form the Health-Law Partnership. Physicians who see a possible legal issue related to a health problem, such as asthma that is exacerbated by mold in a home, can refer families through HeLP. Law students represent the families in legal matters.

“I’m proud of the close working relationships we’ve formed with legal services providers here in Connecticut,” Barry says. “They help us deliver on our dual mission here in the clinic: service to our students and access to justice for our clients.”