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ATTORNEYS AT LAW

Planning for the Future

Special Needs Community Newsletter
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Your Rights Under the Individuals with Disabilities Education Act

One of the most important laws protecting the rights of children with special needs is the federal Individuals with Disabilities Education Act. The current version of the Act, signed into law by President George W. Bush, is known as IDEA 2004. Under IDEA 2004, children with special needs and their parents have a number of rights that are designed to ensure educational success in the public school system.

“Free and Appropriate Public Education” and Individualized Education Plans

Under IDEA 2004, every child with special needs is guaranteed a free and appropriate public education (FAPE). For the school district to meet the FAPE standard, it must provide the student with an education that is publicly funded, meets all other state educational standards, and continues from kindergarten through 12th grade.

The final, and most important, element of the FAPE standard is the individualized education plan (IEP). An IEP is a written document describing a plan for the child’s education, which must include measurable yearly goals, a description of the services the child will receive, and a plan for how the child’s parents will be updated on their child’s progress throughout the year. Like

many federal education laws, IDEA 2004 takes a relatively hands-off approach. The Act does not specify detailed standards for the types of services that school should provide to each student. Instead, the Act tries to ensure that each child’s needs are met by guaranteeing parents the right to participate in the process of developing the IEP. This participation takes the form of a series of IEP meetings in which the parents, teachers, school administrators and possibly other experts discuss the child’s needs, the progress the child has made in previous school years and the different services that may be available. School administrators are required to take this information into account when drafting the IEP, and they must update the plan every year based on the child’s progress and changing needs.

It is very important that every parent of a child with special needs actively participates in the IEP process. The Supreme Court has held that IDEA 2004 only requires that the special education services provide “some educational benefit” to the child with disabilities. This means that parents may not challenge the IEP on the basis that it does not provide the best possible education for their child. As long as the plan is reasonably calculated to provide the child with a non-trivial educational benefit, the school district has complied with the Act. Therefore, it is vital that parents make

“There is no substitute for a parent’s active involvement in a child’s education.”

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their voices heard throughout the IEP process in order to maximize the benefit that their child receives from his or her public education.

Special Education and Related Services

The services provided to a child with special needs fall into two categories: special education and "related services." Special education includes one-on-one tutoring, time spent in classrooms with other children with special needs and other educational instruction. "Related services" include assistance that is not strictly instructional, but is necessary to enable the child to learn from the instruction that is provided. Examples range from sign language interpreters to administration of medication.

The school must provide both special education and "related services" at no cost to the parents. The only exception is that the school is not required to provide "medical services," which is defined by the Act as services that must be performed by a licensed physician. For example, if a child needs catheterization that can be performed by the school nurse, the nurse is required to provide this service free of charge. But if the catheterization must be performed by a physician, the school need not provide or pay for this service.

The Least Restrictive Environment Rule

Finally, IDEA 2004 provides that every child with special needs must be educated in the least restrictive environment. This means that every child will be placed in a mainstream classroom for the duration of the school day unless a free and appropriate public education cannot be provided in a mainstream classroom. In other words, a child with special needs cannot be removed from a mainstream classroom simply because the classroom is overcrowded or the teacher is overburdened. However, if a child needs, for example, one-on-one reading instruction in order to receive the educational benefit he or she is entitled to, the child may be moved into a special classroom during reading lessons.

Conclusion

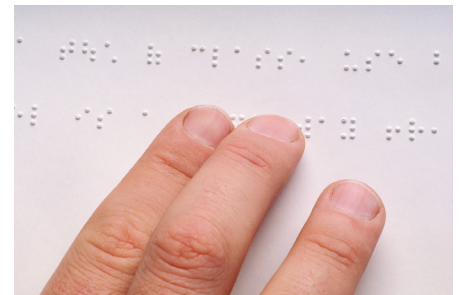
IDEA 2004 creates a number of rights for children with special needs in the public school system. At the same time, there is no substitute for a parent's active involvement in a child's education. If you believe you or your child has been denied rights under IDEA 2004, contact a qualified attorney.

Bill Would Allow Tax-Free Savings Accounts for People with Disabilities

In November 2011, Congress introduced the Achieving a Better Life Experience Act, or ABE Act, which would create new savings accounts providing a number of benefits for people with disabilities. The accounts would allow individuals to accumulate savings and collect interest on those savings without incurring any tax obligations.

Legislators have modeled the program after the higher education savings plans authorized by Section 529 of the Internal Revenue Code. Funds in the accounts could be used to pay for qualified expenses, including education, housing, medical services and assistive technology. In addition, an ABE account would not cause an individual to lose eligibility for Medicaid, SSI and other federal programs so long as the account contains less than \$100,000.

A similar bill was introduced in 2009 but could not be passed before the congressional session ended. The



ABE Act enjoys support from representatives on both sides of the aisle, with supporters ranging from Rep. Barney Frank, D-Mass., to Rep. Ron Paul, R-Texas.

Bob Wright, co-founder of Autism Speaks, said of the bill, "This is important, common sense legislation that will provide an incredible financial boost to families affected by autism and other disabilities who are struggling to pay for critical services...If we allow families to save tax-free for college, it is only fair that they be permitted to save to meet the needs of all of their children."

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Federal Court Grants Rehearing to Child Denied SSI

In September 2011, a United States District Court in Missouri granted a rehearing before the Commissioner of Social Security to a child who was denied eligibility for Supplemental Security Income (SSI) in the case of *Box ex rel P.B.P. v. Astrue*. The decision represents a victory for children with complex disabilities, including children with Not Otherwise Specified (NOS) diagnoses.

Lori Box, the plaintiff before the District Court, first applied for SSI benefits on behalf of her son when he was six years old. The Social Security Administration denied her request, but granted her a hearing before an administrative law judge. This hearing took place two years later, when her son, identified by the court only as P.B.P. for privacy reasons, was eight.

P.B.P.'s issues began in the second half of kindergarten. He would quickly become very angry when he made a mistake in completing a school assignment, lost at a game, or simply did not get his way. During these outbursts, he would often throw himself onto the floor, scream, throw and kick furniture, run out of the classroom or threaten to kill himself. On a few occasions, he tried to hit and bite teachers and other school personnel. His teachers noted that he had difficulty staying on task, comprehending written material and following detailed instructions.

Over the next two years, P.B.P. saw five different psychologists and psychiatrists who could not seem to come to a definite diagnosis. At various times, doctors had diagnosed him with ADD, ADHD, impulsive explosive disorder, oppositional defiant disorder, conduct disorder, Asperger's Syndrome, mood disorder NOS and anxiety disorder NOS. The doctors also questioned whether he had language disorder, motor coordination disorder, seizure disorder, specific learning disabilities or bipolar disorder. During this period, P.B.P. had also taken no fewer than seven different medications.

Even though it was clear that P.B.P. needed a good deal of individual attention and treatment, the administrative law judge did not believe that P.B.P. was eligible for SSI. An individual qualifies for SSI if he or she has one of the disabilities listed in the Social Security Administration's regulations or the functional equivalent of a listed disability. Because of the complexity of

P.B.P.'s symptoms, the court focused on the question of whether he had the functional equivalent of a listed disability.

The court granted P.B.P. a rehearing because the administrative law judge did not sufficiently analyze the "extensive narrative and detailed educational and psychological evaluations relating to P.B.P.'s relevant behavior." Instead, the administrative law judge relied almost exclusively

on a questionnaire completed by one of P.B.P.'s teachers, P.B.P.'s second grade checklist report card and a checklist evaluation form completed by a non-physician, non-examining consultant. Due consideration was not given to the significant behavioral problems that were documented by multiple experts. The District Court judge suggested that P.B.P. had marked limitations in the domains of "Interacting and Relating with Others" and "Caring for Yourself," and directed the administrative law judge to reevaluate P.B.P.'s case.

Special needs children with complex issues may not technically have one of the specific disabilities listed in the federal regulations. In applying for SSI, families of these children will need to rely on the functional equivalent rule in the Social Security Act. This decision by the District Court shows that the Social Security Administration is required to give full consideration to the unique challenges faced by each family, and that a family cannot be turned away because of an unusual or rare diagnosis.



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Blog Post

Special Needs Kids: Autism Elopement

CNN released an article in April of 2011 titled “Eye on the door: Life with autism wandering” about children with autism who tend to wander off. Whether you are in public or at home, the thought of your child wandering off can be terrifying for any parent. Parents of a child with any diagnosis that causes the child to have more of a tendency to attempt to escape parental supervision should take extra precautions.

For a few key ideas from the article, read Misty Watson's blog post at http://bit.ly/misty_watson_autism_elopement

Spotlight: KEEN St. Louis

KEEN St. Louis, short for Kids Enjoy Exercise Now, is a non-profit that provides one-on-one recreational opportunities for young people with physical and developmental disabilities. The

organization's core program, KEEN Sports, meets regularly at Saint Louis University High School, and features basketball, jump rope, hula hoops and other activities. In addition, KEEN Swim events allow KEEN athletes to have fun in the pool with inflatable water equipment.

All programs are run by an all-volunteer team of coaches and are provided at no cost to the youth or their caregivers. KEEN St. Louis has sister organizations in seven different cities, all affiliated with the national non-profit KEEN USA. For more information, please contact KEEN St. Louis Executive Director Dave Welborn at 314-259-5980 or at info@keenstlouis.org.



iPad Apps for Autism

If you have someone with autism in your family, a tablet computer, such as an iPad or an Android tablet, may be a good investment.

Tablet computers offer numerous apps designed to help children with special needs, and apps specifically designed for people with autism can work wonders in helping individuals with autism communicate.

St. Louis native Mark Bowers designed an app called **Sōsh** that helps young people develop social skills. According to the app's website, Sōsh uses a methodology designed around the "five R's" – Relate (connect with others), Relax (reduce stress), Regulate (manage behaviors), Reason (think it through) and Recognize (understand feelings).



Photo By Sean MacEntee

Of course, tablet computers can be pricey, and so can the apps that run on them. There are numerous websites dedicated to reviewing apps designed for children with special needs.

One of the most popular websites is *Apps For Children With Special Needs (A4CWSN)*.

Autism Speaks also maintains a list of useful apps.

CBS News also ran a story on the subject in October 2010. The story was titled "*Apps for Autism: Communicating on the iPad*" and can be viewed online.

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