

# Special Education Law Update

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## Overview of Special Education Law

**S**pecial education law is a dynamic, complex area of practice that is continually changing.

The touchstone of the law is the Individuals with Disabilities Education Act (“IDEA”), which guarantees a “free and appropriate public education” (or “FAPE”) for all disabled students between the ages of three and 21. FAPE includes providing special education and related services designed to meet a child’s unique needs and prepare him or her for further education, employment and independent living primarily through an individualized education program (“IEP”).

IDEA requires that children be educated in the least restrictive environment possible, given their individual needs. Parents and school districts must work to-

gether to arrive at an appropriate IEP and placement for a child. When disagreements arise as to the appropriateness of an IEP, a placement or particular related services, parents can retain a special edu-



cation attorney to negotiate on their behalf. This retention may involve something as simple as informal negotiations between the attorney and school district. It can also involve more formal court proceedings, such as utilizing the parents’ legal right to seek mediation, a due process hearing (akin to an expedited civil trial without jurors) or a complaint investigation.

It is often difficult for a parent to navigate the complexities of IDEA’s provisions, and particularly to ensure that a school district *timely* complies with all of its obligations under IDEA. For these reasons, an attorney specializing in special education law who is well-versed in the IDEA law can often make this process easier.

In determining whether contacting a special education attorney is the right move for you, it is important to be aware that IDEA has a fee-shifting provision, which provides that a court may award reasonable attorneys’ fees to the prevailing party in litigation. Consequently, successful parents in a court proceeding brought under IDEA may have the opportunity to achieve reimbursement of their legal fees. ■

*Budd Larner, P.C. is pleased to offer services in the area of special education law for families of children with special education needs through its associate, Laura A. Siclari, Esq.*

*Obtaining an appropriate education for your child is critical to his or her future. Helping families be proactive about their situation is a focus of our special education services. We have the know-how to help you navigate your rights under the law.*

## Special Education Law Update

### Legislative History

Special education law in its modern form can be traced to the 1975 passage of federal legislation, The Education for All Handicapped Children Act. In 1990, the Act was renamed the Individuals with Disabilities Education Act (“IDEA”) (20 USC 1400 et seq), which is implemented through federal regulations (34 CFR Part 300). In 1997, IDEA received significant amendments. In 2004, IDEA was reorganized and amended by the Individuals with Disabilities Education Improvement Act of 2004, now known as IDEIA, to implement further changes, in particular to align IDEA with the No Child Left Behind Act of 2001.

IDEA is “spending clause” legislation, meaning that it only applies to those States and their local educational agencies that accept federal funding under IDEA. Despite the non-mandatory nature of this legislation, all States have in fact accepted funding under this statute and are subject to it. New Jersey has enacted the federal IDEA’s requirements through its Administrative Code (N.J.A.C. 6A:14 et seq). ■

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### Laura A. Siclari, Esq.

Ms. Siclari is a life-long advocate of children with special needs, having seen first-hand through the struggles of a special needs sibling the importance of an appropriate education, uniquely tailored to a child’s particular special needs. Ms. Siclari’s interest in special education law led her to become involved in the Special Education Clinic representing indigent families while attending Rutgers Law School in Newark. Since that time, she has never lost sight of her goal of building a prac-



tice in special education law. Within the past few years, Ms. Siclari has begun to see that goal through to fruition.

Ms. Siclari’s special education law practice is limited to the representation of children with disabilities and

their parents in matters involving disputes with New Jersey school districts. Ms. Siclari is committed to resolving disputes at the earliest practical time, while also being prepared for the necessity of litigation. Ms. Siclari provides clients with a well-rounded array of special education-related legal services, from consultation and document review to IEP meeting attendance, mediation and due process litigation and special needs estate planning and guardianship. ■

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