

Pandemic Placements: A Discussion Panel of Parental Unilateral Placements & District Responses During COVID-19

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Pandemic Placements: A Discussion of Parental Unilateral Placements & District Responses During COVID-19

Presented by Laura Sinars and Zaria Udeh

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1

Remote Learning: Parental Private School Placements

- School districts are experiencing an uptick in private parental placements as a result of spring school closures and remote learning this fall, including:
 - Homeschool & Private School Enrollment
 - Requests for Part-time Enrollment
 - Private School Placement with requests for reimbursement

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2

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Unilateral Placements: When Do They Apply?

- Students Determined Ineligible for an IEP:
 - Courts have found that “when a child requires special education services, a school district’s failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP.”
- Students Receiving Supports/Services Pursuant to an IEP

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Unilateral Placements: Definition under the IDEA

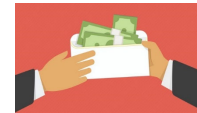
- A Unilateral Placement Occurs When:
 - A child is placed by a parent in a private educational program, and
 - Seeks district reimbursement by claiming that the public school district did not provide the student with a free appropriate public education (“FAPE”).

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4

Unilateral Placements: Reimbursement Responsibility

- Reimbursement for Educational Costs of Unilateral Placements
 - District may be responsible if:
 - The placement in a private school or facility was necessary to effectuate FAPE
 - District is not Responsible if:
 - The district has made FAPE available to the child



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5

When FAPE Is At Issue

- School districts may be required to reimburse the parent for the cost of private school placement if:
 - The district has not made a FAPE available to the student in a timely manner prior to the enrollment in a private placement, **and**
 - The private placement is appropriate for the child.

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An Offer of FAPE Must be Made

- A hypothetical IEP/placement that the district *could* have offered is not sufficient
- The determination about whether or not the student receives a FAPE is based on the educational program/placement the District did offer
 - Note: Implementation is not required

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Appropriateness of the Private School Placement

- A hearing officer or court may find the private placement to be appropriate even if it does not meet the State standards that apply to LEAs.
- But note:
 - A school district has no obligation to provide for a placement whose sole function is to provide services to address non-educational needs.
 - Courts draw a distinction between those services that are primarily for treating a child's medical or behavioral problems and those services that are primarily for enabling educational instruction.

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Parental Requirements Prior to Reimbursement



- The reimbursement of educational costs for a private school placement may be reduced or denied if the parent doesn't:
 - Inform the IEP Team that they were rejecting the placement proposed by the public agency;
 - Provide notice of their dissatisfaction with the IEP and intent to unilaterally place the student; and
 - Indicate their intent to enroll their child in a private school at public expense (i.e. unilateral placement "at public expense"); or

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9

Parental Requirements Prior to Reimbursement (cont'd)

- At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described; or
- Prior to removal, the district provided prior written notice to the parent of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the child available for the evaluation; or
- Upon a judicial finding that the parent's actions were unreasonable.

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Notice Requirement: Purpose

- The purpose of the notice requirement is to:
 - Provide timely notice of the rejection of the proposed IEP; and
 - Give districts the opportunity to provide a FAPE before a child leaves public school and enrolls in private school.
- Courts have found it proper to deny reimbursement when the student's parents agreed to the IEP proposed by the school and only informed the district of their concerns after parents arranged for the student's enrollment in private school.

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Exceptions to the Reimbursement Requirements

- The cost of reimbursement for unilateral placement shall not be reduced or denied for failure to provide the required notice if:
 - the district prevented the parent from providing such notice;
 - the parent had not received notice of his/her responsibility to provide the notice described above; or
 - compliance with the requirements would likely result in physical harm to the child; and

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12

Exceptions to the Reimbursement Requirements

- May not, in the discretion of the court or hearing officer, be reduced or denied for failure to provide the required notice if:
 - The parent is illiterate or cannot write English; or
 - Compliance with the requirements would likely result in serious emotional harm to the child.



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13

Case Law Update



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Case Law Examples

- Reimbursement Required
 - Autism/ABA Programming
 - Madison Bd. of Educ. v. S.S. and D.S. ex rel. R.S. (New Jersey, Sept. 2020)
 - Multiple Disabilities/LRE
 - Board of Educ. of Montgomery County v. J.M. (Maryland, March 2019)

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15

Case Law Examples

- Reimbursement Denied
 - ADHD/Prep School
 - Fragnito ex rel. L.F. v. Board of Educ. of the Suffern Cent. Sch. Dist. (New York, July 2020)
 - Dyslexia
 - J.F. and J.F. ex rel. J.F. v. Byram Twp. Bd. of Educ. (Third Circuit, May 2020)

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16

Case Law Examples

- Reimbursement Denied
- Anxiety/School Refusal
- R.H. ex rel. C.H. v. Board of Educ. Saugerties Cent. Sch. Dist. (Second Circuit, July 2019)



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Provision of FAPE During Remote Learning: Hold IEP Meetings

- Schedule IEP meetings to address parent concerns and/or review a student's functioning during remote learning
- Schedule an IEP meeting in response to a Unilateral Placement
- Courts will find the actions of parents to be unreasonable if they take an all or nothing approach in contrast to the District's ongoing efforts to work collaboratively or stall the development of the IEP

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18

Provision of FAPE During Remote Learning: Provide Prior Written Notice

- Ensure that the IEP provides prior written notice
- The notice must be in sufficient detail to inform parents if the District:
 - Proposes to begin or change the identification, evaluation, or educational placement of the student or the provision of FAPE; or
 - Refuses to begin or change the identification, evaluation, or educational placement of the student or the provision of FAPE.

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Provision of FAPE During Remote Learning: Implement and Progress Monitor

- Transition Supports
- IRLPs
- Data, Data, Data
- Consideration of in-person learning opportunities



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Practical Tips

- Continue to comply with child find obligations at all grade levels
- When conducting case study evaluations, carefully document all evaluations
 - If a student is denied special education services and programs thoroughly document the reasons why

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Practical Tips

- When a student is withdrawn from a public school and placed by a parent in a private school, be sure to gather information regarding the student's performance and progress in the public school program (academic, social and behavioral)
- Critically study the evidence of progress and the documentation to determine whether there are issues or concerns with either the evidence of progress or the paperwork
- Consider meeting with the parents to discuss their concerns and/or whether to convene a formal IEP meeting

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Practical Tips

- If parents mention possible private placement to remedy any concerns, consider proposing a reevaluation of the student to address the program concerns being raised
- Consider supports and services that may be available within the District

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Practical Tips

- If parents issue a unilateral placement notice, document receipt of the notice and offer to hold an IEP meeting as soon as possible
- Consider which school/District staff or other representatives should be present at the IEP meeting

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Practical Tips

- Prepare the school team to consider any outside information, parent input, and outside evaluation information
- Organize all records and materials gathered in the event of a due process hearing

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25

Questions?



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26

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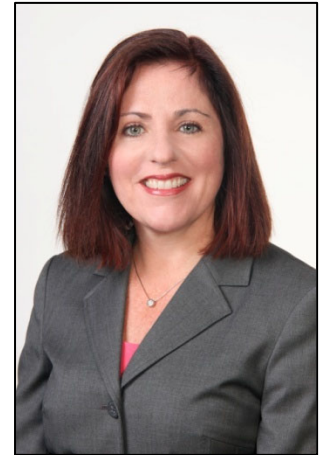
Laura Sinars focuses on special education and students' rights law. She counsels and represents public school districts at IEP meetings, due process hearings and mediation. She also represents districts at student expulsion and residency hearings. Laura has defended district decisions regarding evaluations, services and placement of special education students in due process hearings. She has successfully prevailed in hearings to defend against parents' unilateral private placements. In the area of student rights, Laura has assisted clients with routine student issues related to records, discipline, health and 504 questions. She has also assisted clients with building strong residency and discipline cases which proceed to hearing and has successfully defended districts' decisions in state and federal courts. Laura has represented districts before federal and state agencies including the Illinois State Board of Education, the Illinois Guardianship and Advocacy Commission and the Office for Civil Rights.

AWARDS

Illinois Super Lawyers, 2005-2018

RECENT PUBLICATIONS

Contributing author, "Special Education," *Illinois School Law*, IICLE (2005, 2010, 2012 and 2015)



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Education Law
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J.D., University of Notre
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U.S. Court of Appeals for
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Zaria practices in the area of education law focusing in the areas of special education and students issues. Zaria counsels school districts with respect to IEP meetings, 504 accommodations, OCR, ISBE, and IDHR complaints, due process hearings, residency and homeless dispute hearings, student discipline matters, board policy and student handbook review, FOIA requests, student record compliance and contract review. Zaria also counsels community colleges on student related issues.

Prior to joining Robbins Schwartz, Zaria worked for the Chicago Public School District, where she represented the district as a special education attorney in due process matters and special education disputes.

RECENT PUBLICATIONS

"Medical Cannabis at School Wins Legislative OK," Chicago Daily Law Bulletin (2018)

RECENT PRESENTATIONS

Use of Restraint & Seclusion: The Risks & Challenges Districts Face, IAASE (October 2018)

Legal Update in Special Education, Superintendent Leadership Conference (June 2018)

Current Trends Related to Placement and LRE: A Review of Recent Guidance from the Courts, IAASE (February 2018)

"Free Speech" Issues on Public College Campuses, ICCSSO (January 2018)

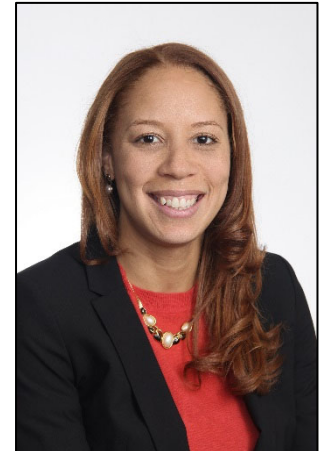
Responding to Requests & Complaints of Transgender Students, IASB/IASA/IASBO Joint Annual Conference (November 2017)

Handling IEP and 504 Plan Disputes, National Business Institute (November 2017)

SB 100...One Year Later: Lessons Learned (October 2017)

Transgender Students Update: The Ever Changing Legal Landscape (October 2017)

Unilateral Placement for Special Education Students: A Big Gamble?, IAASE (February 2017)



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Supreme Court of the
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