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GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

INTRODUCTION TO SPECIAL EDUCATION LAW

With

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Garden State CLE Senior Instructor**

And

Stuart M. Nachbar, Attorney

Program description

Every child in New Jersey is entitled to a thorough and efficient education. This 1.0 credit CLE will teach you how to represent a child with special needs under New Jersey law.

I. Introduction

- **1947 NJ Constitution – every child is entitled to a thorough and efficient education in NJ**
- **Growing special needs population but that must be tempered with those who are “special needs” with high intelligence**
- **People may have learning disabilities, social disabilities – but all students can learn**
- **“thorough and efficient” is not with what the 1975 Individual Disability Education Act (IDEA) came out with – children must be taught and given a reasonably calculated method for the child to receive an educational benefit – is that “thorough and efficient”?**
- **As long as receiving an educational benefit then school is complying with IDEA and caselaw**
- **Every child in NJ is entitled to that level of education**
- **Represent primarily students and children**
- **Those who represent the school boards must have responsibility to protect public monies and insure that public money is being spent wisely**
- **Extra curricular activities vs. educational**
- **Adversaries are collaborative in these cases – professionalism within the special needs community; framework for a hearing is more informal than in state court b/c in OAL; less formal discovery method – free exchange of information; mediation and resolution session that fosters collegiality and working together**
- **Small community of attorneys who practice this type of law**

II. What happens if child needs special services from a school board

- **Not every learning disability qualifies for an individualized education plan – some are better served with a “504” accommodation (school district relaxes certain standards, i.e. extra time for testing, extra time to get to class – not classified as special needs)**
- **Section 504 – a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance**
- **First step to find out if child has been seen by a professional (developmental pediatrician or neurologist) who can diagnose/classify the child**

- **Has the parent contacted the school board – has a certified letter been sent requested child study team**
- **Attorney or parent can send certified letter – attorney should insure that everything necessary is included in the letter – letter to superintendant and to Trenton – if private school then send to principal**
- **Require for level of education constitutionally is not limited if school is a private or public school as long as it is a NJ school**
- **Budget and state and federal money pays for special needs children’s education**
- **If a school district cannot handle the child then the child will be sent to a local district that can provide for the child but the “home” district pays for the child to go to the other school**
- **Request an evaluation by child study team**
- **Child study team is a body within the school that is composed of psychologists and other specialized professionals and will collaboratively evaluate the child**
- **Child study teams are primarily district wide but each school has several case managers who are part of the team**
- **School can resist having child study team evaluate child – have a conversation with the case manager or representative from child study team (CST)**
- **CST has 10 days to respond to request for evaluation, if nothing done then you can demand it, then if still nothing done you can have the child evaluated on your own**
- **Due process hearing before the ALJ – we believe child should be evaluated, here is our evidence, and the school board refuses to do the evaluation**
- **School may resist because of money issues, timing issue, no resources**
- **600+ school districts in NJ**

III. When does a lawsuit need to be filed

- **If parents and school district cannot come to a resolution to benefit the child, then after mediation is must go before the ALJ**
- **IEP (individualized education plan) – a contract between school board and the family**
 - **Formalized IEP done by CST**
 - **CST includes the parent – parent has absolute right to be part of the CST**

- **In divorce situation the divorce decree will usually state who is responsible for the education of the child – usually primary custodial parent**
- **CST signs off on IEP for the school**
- **Special funding may require a resolution by the school board**
- **Many school districts have the resources to accommodate IEP – just a matter of allocating the resources**
- **When school board balks because of money – must go before the ALJ**

IV. Filing before an ALJ

- **File an Order to Show Cause – can get you before an ALJ in less than a week**
- **Here is what we need, here is why, here is backup to show we need this, and here is the excuse why it is not being done**
- **ALJs really do understand the issues and what is at stake**

V. Once IEP is in place

- **If it works, great**
- **If it does not work then need to modify IEP**
- **To modify – the school says there is a need to modify and this is why**
- **Parents can propose to modify based on what they are seeing at home**
- **IEP gets revised annually**
- **Can have interim change or evaluation to the IEP**
- **It is possible that parties are not willing to resolve their issues**
- **Can go to mediation**
- **Can discuss with adversary to try to resolve by negotiating**
- **Caselaw does not say that child is entitled to best education possible**
- **Caselaw says that a free and appropriate public education that is reasonably calculated for the child to receive educational benefits (Board of Education v. Rowley, 458 US 176 (1982))**
 - **School does not have to make the child an A student**
 - **School does not have to make your child into a genius**
 - **As long as child is getting an educational benefit and meeting the student's unique needs**

- **Prepares for further education, future employment and independent living**
- **Is the school helping the child to learn to wash? To read? – this is an educational benefit – very difficult situation to have a child removed from the school district unless the school recognizes that they don't have the resources to provide for the student**

VI. Who is lawfully entitled to this education

- **K through 12 – but not necessarily based on age**
- **A child can be evaluated for early intervention as early as 16 months – Child Find – school district's obligation to seek out and find these children as early as possible to get therapies and prepare them to go to school and be educated**
- **Early intervention is across the state**
(www.state.nj.us/health/fhs/eis/childfind.shtml)
- **Not handled uniformly across the state**

VII. Different issues that confront school districts and children

- **Immigrant children who have language barrier issues**
 - **School is responsible to go into the ESL (English as a Second Language program)**
 - **Find someone to work with the child**
 - **Child cannot communicate because of language issues – not an intelligence issue**
- **Child who is mentally retarded**
 - **Depending on severity of retardation**
 - **Specialized class**
 - **One to one aide**
 - **Physical therapy**
 - **Speech therapy**
 - **Occupational therapy**
 - **How to operate a wheelchair**
 - **How to learn through a touch pad**
 - **Personal hygiene lessons/life skills**
 - **School board is required to provide these services if part of IEP**
- **Asberger's syndrome (type of autism)**
 - **Wide range of functionality for children with this disease**

- **Child is very high functioning mentally – could be genius level but don't relate to the world around them – problems with basic social skills or social motor skills v. autistic child who has great motor skills but cannot do the socialization because wants to be isolated**
- **Reasonable IEP depends on why child has been diagnosed with Asberger's – would depend on what the issues are for each child**
- **IDEA and Free and Appropriate Education – least restrictive environment – programs are set up for child's unique needs to set up for employment and independent living**
- **Some school districts are preferred for children with this disease**
- **Parents will select communities to live based on ability to deal with special needs children**
- **A child can be up to 21 years old before involvement with board of education is terminated**
- **Autistic child**
 - **IEP is tailored to the child**
 - **One child may need something different from another child**
 - **IEP is individualized education plan**

VIII. Limitations on the IEP based on resources/Attorney responsibility

- **Based on the expectation**
- **Attorney's job is to work toward blending expectations of parents, school boards, and CST**
- **Parents may have unrealistic expectations of what can be done for the child**
- **Hard to explain to a parent that what they want may not happen but we can try to get close to what they want**
- **"educational benefit" means that the school is doing their job – there are limits – school board does not have to give the child everything in the world**
- **Attorney must be honest and upfront with the parents/clients**
- **Knowing the facts and the truth is better than walking into it with high hopes and aspirations**
- **Can educate clients on what is going to happen**
- **Sometimes have to tell parents that their expectations are unrealistic**

- **Parents may decide to put child in private school that makes promises of all the expectations – parents then pay tuition – look at economics of the situation**
- **There are situations when a public school will have to pay for private school education**
 - **If the school district cannot meet the necessary education benefit and cannot meet own IEP standards then advocate for public school to pay for private school**

IX. Legal fees

- **Utilize different rates (in/out of court, mediation) to defray costs**
- **Utilize paralegals to do research**
- **Sometimes ALJ will tell school board to pay attorney fees**
 - **If you can show that the board was not doing its job and they are the reason you are in court and you have proven your case, then the court will usually award fees**
- **Cannot charge families what the “usual” rate for experienced attorneys would be**
- **Majority of fees are paid by parents (75% of fees), 25% paid by board of education**
- **Select cases carefully – may counsel parents that they can do it themselves at this stage**
- **Not every case is going to be economically feasible for the firm to handle**
- **Hourly fee basis**