

MARK B. MARTIN, P.A.

Providing legal services and advice in the areas of Special Education Law, Suspension and Expulsion Hearings, Juvenile Justice, Criminal Defense and Civil and Disability Rights Statewide.



A Due Process Success Story and the Role of Private Experts in the Hearing

After a hard fought, eleven (11) day due process hearing, we are pleased to announce another victory for a student with special needs. We were able to secure tuition reimbursement for the parents of a student with a complex combination of disabilities and a primary disability of autism. The parents had unilaterally placed their son at the Harbour School, a private separate day school, after the public school system failed to meet his needs. At the Harbour School, classes are tailored to student's academic abilities and the speech and social skills training and supports are integrated into the day-to-day learning.

During their pursuit of an appropriate education for their son, the parents hired outside experts to evaluate their son and to provide services. Services that are provided privately may include some or all of the following: tutoring, record review, classroom observation(s), testing, evaluations, and/or private therapy. The outside professionals utilized in this case included an Educational Consultant, a Reading Specialist, a Speech-Language Pathologist and a Psychologist. All four (4) of these professionals testified on behalf of the student during the due process hearing and were accepted by the administrative law judge ("ALJ") as experts in their respective fields. One of the strengths of their testimony was that each expert had previously provided services to the student. In doing so, they had first-hand knowledge of his strengths and weaknesses and could formulate their expert opinions regarding the student's educational needs. They were then able to clearly explain to the judge how the school program offered by the Board of Education failed to meet those needs.

In a due process hearing, it is generally the parent's responsibility to prove their child was denied a free appropriate public education ("FAPE"). It is essential that the parents have their own team of experts to prove the student's lack of progress and the student's unmet educational needs in order to win their case. This is accomplished by

offering into evidence expert testimony and supporting documents such as private evaluations, test results and private classroom observations.

In this case, the Frederick County Public School ("FCPS") system presented the testimony of thirteen (13) witnesses, with eleven (11) of those witnesses accepted as experts in their respective fields by the ALJ. While the parents only presented four (4) expert witnesses, each had extensive experience with the student and could provide detailed information regarding his educational needs and his lack of educational progress. Without their own team of experts to refute the claims by the school personnel/experts that the student was making meaningful progress and that the IEP was appropriate, the parents would not have been able to prove their claims regarding their son's lack of meaningful progress and the failure of the school to provide an appropriate educational program.

Interestingly, in this case the ALJ noted that the classroom observation conducted by the private educational consultant was "strikingly similar to the instruction and interaction that" the FCPS Expert in Reading Instruction "observed almost a full year earlier." Notably, the ALJ quickly recognized that "the Student did not engage in the material presented by the general education teacher because that material was too difficult" and despite this information, FCPS continued to recommend the same educational placement and program to the student for another full year. The ALJ concluded that the experts basically agreed upon the amount of progress that the student made, thus the dispute was really about whether or not that progress was **appropriate and meaningful**. The school argued that "the Student's limited and inconsistent progress was commensurate with his cognitive abilities and therefore meaningful." The private experts were able to disprove that claim with comprehensive and detailed

testimony and data which ultimately persuaded the ALJ that the progress was not meaningful for this student and thus he was denied a FAPE.

The judge also reported that "FCPS spent a considerable amount of time arguing that the Parent failed to prove that the Student was making progress at Harbour." The ALJ then held "[t]he Parent does not have this burden. A decision on the appropriateness of a unilateral placement can be made on the first day that a student matriculates at the placement. Parents are not required to wait to file a due process hearing complaint seeking reimbursement until the student has succeeded in the new school. The Parents could have filed the request immediately." School systems often argue in due process hearings that when a student is unilaterally placed that the parents also have to prove the student is making progress in the private placement. In this case, the ALJ reiterated and articulated that the law does not require this proof. Instead, the Parents only have to prove that the private placement is appropriate based on the student's unique educational needs.

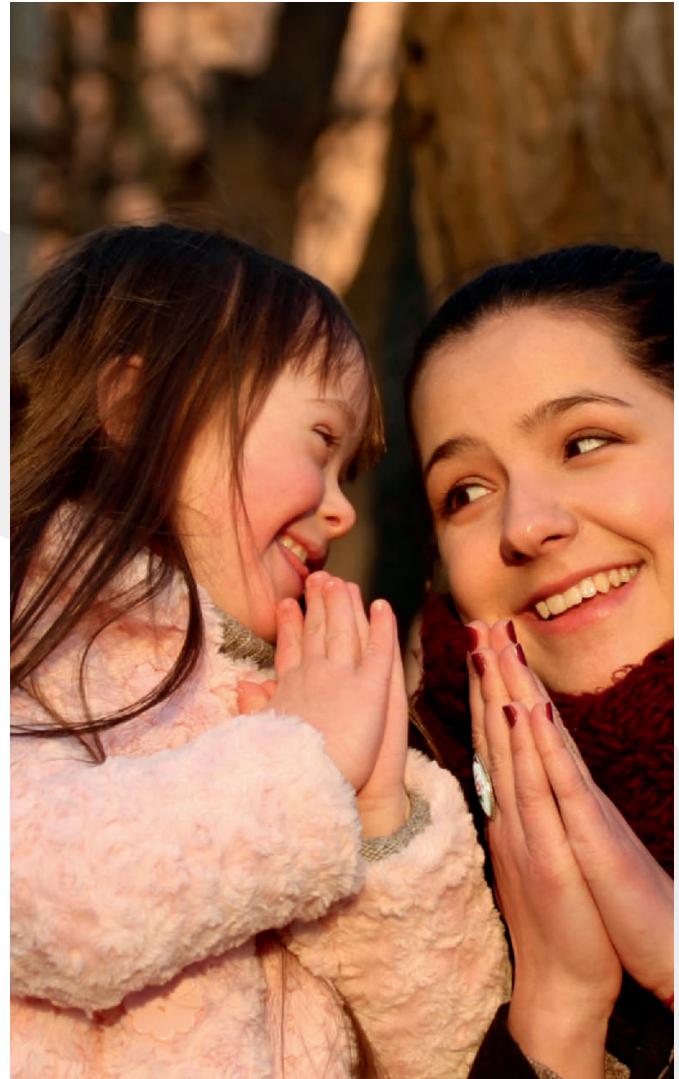
At its core, a request for a due process hearing is about the provision of a FAPE to a student. However, the legal issues that arise in each case are varied and at times extensive. It is essential to consider each of these legal issues and to assess how the arguments and strategy regarding one issue may affect another issue in the case. For this reason, we highly recommend that families contact our offices as soon as they perceive any issues arising regarding their child. The opportunity for planning and careful consideration of all resolutions will generally ensure a more positive and focused outcome for the student.

Please feel free to contact us via email or call us to speak with any of our attorneys about questions or concerns that you may have.

Educational Consultant — “EC”

Educational consultants are typically certified special education teachers with experience in teaching children with disabilities either in the public school system or in private, separate, special education schools. They are experienced in reviewing both current IEPs and/or past IEPs to determine whether or not goals and objectives are appropriate based on the student’s individual needs. They also review and consider whether all relevant and necessary accommodations, supplemental supports and services are included in a student’s IEP to ensure appropriate educational progress. Upon a determination that important items are missing from an IEP, they make specific recommendations and suggestions for a stronger and more comprehensive IEP for the student.

Additionally, they often review past and present progress reports and analyze what, if any, goals and short term objectives have been achieved by the student and whether or not the goals and objectives are being carried over from year to year. Part of their analysis frequently includes a classroom observation of the student in their current educational program to assist in evaluating the appropriateness of the program. The EC may have to visit the school on several occasions to observe the student during different academic tasks or during related therapy hours. ECs can also administer both formal and informal assessments to evaluate a student’s present level of educational performance. ECs are extremely helpful in recommending and considering alternative educational placements. When hiring an EC, it is important to consider their availability to participate in IEP meetings, mediation sessions and/or in due process hearings. We work closely with a wide range of ECs and depending on the goals of the parent; we can make specific recommendations that will assist in achieving those goals.



Things to Keep in Mind Regarding Private Experts:

- one** Based on your child’s individual needs...it may be important to select very specific evaluators to assist you with understanding your child’s specific needs, we can help with those decisions.
- two** Plan, plan plan...it often takes several weeks to get an appointment with a good private evaluator, so call as soon as possible.
- three** After the appointments, assessments and testing are completed... receiving a final report may take up to 6 weeks, so don’t delay.
- four** Some areas of expertise to consider include: a comprehensive speech and language evaluation, a complete neuropsychological evaluation, an educational evaluation, classroom observations, an occupational therapy evaluation, a neurolinguistic evaluation or a behavioral specialist, to name a few.

COPAA (Council of Parents, Attorneys and Advocates)

Committed to supporting excellence in special education for students with disabilities nationwide.

All of our attorneys just returned from the annual COPAA conference, held in Albuquerque, New Mexico this year. COPAA is an independent, nonprofit, membership organization of attorneys, advocates, parents and related professionals working to protect the civil rights and secure excellence in education on behalf of the 7.1 million children with disabilities in America.

COPAA is committed to creating a level playing field to ensure children with disabilities receive the high-quality education to which they are entitled and to ensure that they have available to them a free appropriate public education (FAPE) that is designed to meet their unique needs and prepare them for post-secondary outcomes, community participation, and employment. For more information and to join COPAA please go to www.copaa.org.

The annual conference is a highly regarded event in the field of special education for parents, attorneys and advocates. Attendees from across the country gather to participate in continuing education, intensive training, workshops and meetings with respect to securing a meaningful education for children with disabilities. Attending the conference is one of the best



WHAT QUESTIONS DO YOU HAVE? EMAIL US YOUR QUESTIONS OR COMMENTS AT INFO@MARKMARTINLAW.COM.
NOTE: THIS NEWSLETTER IS NOT INTENDED TO PROVIDE ANY LEGAL ADVICE. FOR LEGAL ADVICE PLEASE CONTACT OUR OFFICE SO WE CAN DISCUSS YOUR SPECIFIC CASE AND CIRCUMSTANCES.

five Keep a log with complete contact information for each expert and make sure you share that information with your attorney and any other private experts you hire... in other words make sure your team knows each other.

six School activities, such as standardized testing, field trips and inclement weather, impact the availability and opportunity to conduct classroom observations so don't wait too long in the school year to plan for an observation.

seven If your child is due for a re-evaluation, you may want to have some, or all, of the testing done by private providers... if so, then strive to have it completed no later than three (3) weeks prior to the annual review date of your child's IEP – be prepared.

We work with a wide network of private experts so please don't hesitate to contact us with any questions or help you may need.

and fastest ways to become familiar with a wide range of resources and topic areas for parents and professionals to share and gain, ideas and expertise.

As a current executive board member and Treasurer of COPAA, Mark taught two, full day, pre-conference sessions at this year's conference. The first session focused on issues of Behavior and Discipline for Students with Disabilities and the second, full day session involved strategies and pitfalls when Litigating Due Process Hearings.

A quick visit to the COPAA.ORG website reveals just how extensive and comprehensive COPAA is as a resource to the special education and disability rights community.

We are committed to the goals and mission of COPAA and we value the opportunity each year to advance our skills, knowledge, and contacts in the field of special education by attending the annual conference. We encourage everyone to join COPAA and access the valuable information and resources it provides.

**** PLEASE JOIN US NEXT YEAR, MARCH 7-10, 2014, AS THE ANNUAL COPAA CONFERENCE IS BEING HELD IN BALTIMORE, MD!! ****

Suggestions for Keeping it All Together

It is very helpful to keep a single running timeline of events and reports regarding your child. It may be beneficial to keep a separate notebook, set up a table in a word document or utilize an excel spreadsheet to keep track of all school meeting dates, IEP dates, and important events such as any public or private assessments or evaluations. It is much easier to track that information as it happens so you are well prepared in the event an issue arises. It is also recommended that you incorporate brief notes about the most significant outcomes of those events, meetings or reports.

Generally speaking, most new or former clients contact us after a dispute has arisen and tension is high. The more information you are able to access and provide to us regarding your child's educational history, no matter how young or old the student, the faster we can begin to assist you with a resolution. Additionally, keeping copies of all of your child's records in a single binder, box or electronic file will ease your mind knowing that you have easy access to all of that data.

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Legal Services Available

Based on conversations and inquiries made by several of our current clients, we would like to remind everyone of the array of legal services we can provide. Either individually or in conjunction with other attorneys that we have formed close strategic partnerships with, we are able to offer services in the following practice areas:

Our Staff

Mark B. Martin, Esq.

Jennifer A. Falter, Esq.

Sally Fite Stanfield, Esq., Of Counsel

Demetria Nelson, Legal Assistant

Please feel free to contact our office with any legal issue and we will let you know if it is a case our firm can handle.

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