HOT TOPICS IN SPECIAL EDUCATION

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# SOCIAL MEDIA AND SPECIAL EDUCATION PARENTS

## How does social media and other new technology impact parental disputes in the special education context?

### Parents may be more inclined to turn to social media for support during disagreements with school administrators and employees over special education issues.

### For example, on March 19, 2012, a parent published a video on YouTube that has drawn 66,531 “hits” relating to a dispute with a Texas school district, New Caney ISD, over her daughter LaKay’s use of a walker. LaKay has Cerebral Palsy and the parent’s position was that she should be allowed to use a walker. The school administration believed that the walker was unsafe. The parent audio recorded a conversation with a special education administrator about the walker and posted it on YouTube over a video of pictures of happy LaKay using her walker. The video drew national media attention. The school administrator said that LaKay could not use the walker because it was unsafe, because the child fell in the parking lot with her mother. The mother pointed out that when a general education child falls in the parking lot, the school does not take her shoes away from her, and said that the school district was being “discriminatory.” The special education administrator made a number of comments that drew criticism. He said sarcastically at one point: “We’re gonna not do what the mother wants us to do. Make sure you get that down on tape.” He also said “You’re not concerned about [the student].” The administrator then said “It’s up for a court to decide then.” The video states that a fund was set up to accept donations on behalf of LaKay and asks viewers to “Help LaKay’s voice be heard by contacting New Caney ISD.” The video can be found at <http://www.youtube.com/watch?v=3BTVNQRkKfY>.

### In light of this new reality, school employees and administrators must be on guard and assume that every conversation that they have with a parent might end up on YouTube, Facebook, or some other social media platform. This is true even if laws (e.g., the Illinois eavesdropping law that was passed recently) may prohibit such recording.

## What are some takeaway tips for special education administrators and employees on how to manage what seems like a social media landmine with parents in the special education realm?

### Special education is fraught with emotion and emotional issues do not “translate well” over social media. Anything you do or say can end up in the social media queue – this is simply the day and age we live in. Whether right or wrong, educators are subject to heightened public scrutiny.

### Assume your conversations are being recorded and that the e-mail you are about to send will be on the front page of tomorrow’s newspaper (or up on YouTube!).

### “People skills” may be considered soft skills, but staff members should be trained on people skills, all the same.

### Recognize when and learn how to adjourn a meeting that is out of control. Resort to alternative dispute resolution in difficult situations.

### Although not unique to social media, avoid sending messages (including social media messages or email messages) with negative impressions of parents. These almost always must be produced in preparation for due process and may come back to bite you (and your employer!).

### If a parent takes steps that appear to violate the law (e.g., recording an IEP meeting without permission) contact legal counsel for help with an appropriate response.

# USE OF SOCIAL MEDIA WITH STUDENTS IN THE CLASSROOM AND BEYOND

## What is the definition of an assistive technology device?

## An “assistive technology device” is defined in the regulations implementing the *Individuals with Disabilities Education Improvement Act* (IDEA) as any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability, not including a medical device that is surgically implanted or the replacement of such a device. 34 CFR §300.5.

## What is the definition of an assistive technology service?

## An “assistive technology service” is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. 34 CFR §300.6. By virtue of these definitions, it is clear that assistive technology devices and services can include social media.

## Are social media tools and related new technologies considered forms of assistive technology?

## Yes. Social media tools and related new technologies can be valuable as assistive technology. As described in a recent report from the Virginia Department of Education:

[S]ocial media tools are accelerating in popularity. Teens increasingly are communicating digitally via text messaging and social networking (Lenhart & Madden, 2007). Access to social media tools is important to all students, regardless of their learning approaches or differences. Digital participation is key to accessing the wealth of information exchanged across this growing online network of social communities. In addition, social media can offer access to students who may be socially isolated by their disabilities; however, their participation thus far has remained relatively low (Gray, Silver-Pacuilla, & Saucer, 2008). According to a 2007 report, only 44 percent of students with disabilities had computers at home—compared with 72 percent without disabilities—and only 38 percent of students with disabilities had Internet access from home (KirkHart & Lau, 2007).

This instant-access appeal of social media tools offers an attractive convenience feature for many users and school divisions looking to engage diverse learners on shoestring budgets. Many portable handheld devices, smartphones, and portable USB keys include useful learning supports and AT program features (Gray, Silver-Pacuilla, & Overton, 2009).

Increasingly, individuals rely upon the quick speed of readily available Wi-Fi hot spots and Internet connections to access and share information. Broadband access typically maximizes the speed of these tools, which helps ensure better access for all. The U.S. Chamber of Commerce (2009, hereafter USCC) notes, “Broadband is quickly becoming an essential AT, both as a medium for the delivery of critical services to persons with a disability and as a vehicle that enables a wide range of services and tools” (p. 8). Apple, Verizon, AT&T, and other major commercial technology firms increasingly are including ubiquitous accessibility features and functionality within their products (USCC, 2009). This ubiquity is raising awareness about AT and the importance of universal designs.

## “*Infusing Assistive Technology for Learning: Assuring Access for All Students*,” available at <http://www.doe.virginia.gov/support/technology/edtech_plan/assistive_technology.pdf>.

## Is a school district ever required to use social media or other technology with a special education student?

## Required? Probably not (yet). But keep in mind that depending on the unique needs of each student, the use of social media or other technology may be a required component of their IEPs. The IDEA requires schools to ensure that special education students receive “assistive technology devices and services” if required as part of the child’s special education, related services, or supplementary aids and services. 34 CFR §300.105 (a). A school district must, when warranted by a student’s suspected or known disability, evaluate whether the student’s functional capabilities may be increased, maintained, or improved through the use of assistive technology devices or services. *Letter to Fisher*, 23 IDELR 565 (OSEP 1995). The need for assistive technology is determined on a case-by-case basis, taking into consideration the unique need of each individual child. *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).

## Must social media tools be included in a student’s IEP?

## Yes, to the extent that the device and/or service is needed to ensure that the child receives a free, appropriate public education, the specific device and/or service must be identified in the IEP. Thus, if the IEP team determines that a child with a disability requires a social media-related assistive technology device or service as part of the child’s special education or related services, or if the team determines that such a device is needed to facilitate the student’s participation in the regular education program, it must be included in the IEP. *Letter to Anonymous*, 24 IDELR 854 (OSEP 1996).

## Is a school district required to purchase assistive technology devices for home use?

## Generally speaking, assistive technology devices are appropriate for home use when the student uses the device to communicate. However, parents are increasingly making requests for assistive technology devices for homework/organization purposes. The bottom line is that if an IEP team determines that a particular assistive technology device is required for home use in order for the student to receive FAPE, it must be provided to implement the IEP. *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).

# SERVICE ANIMALS

## Can a school district refuse to allow a service animal at school or school functions because of the impact that the animal may have on other students who have allergies, asthma, or other breathing difficulties and who may suffer adverse reactions to animal dander?

Probably not. The law offers very little guidance as to how schools are supposed to accommodate service animals, but courts have determined that service animals must be accommodated.

## What do you do when a parent indicates that a student will require a service animal at school?

Convene an IEP meeting to discuss the service animal. Ignoring a request could lead to a determination that there was a FAPE violation.

*In re: Student with a Disability* (Dec. 18, 2014): Parents of a 2nd grade student with a seizure disorder filed for due process after principal banned the student’s service animal from school multiple times. The hearing officer found against the district, determining that the parents were denied meaningful input because the district failed to hold an IEP meeting after the parents requested one and failed to consider the student’s need for a service animal. The failure to convene an IEP meeting also allowed the dispute between the student and teacher to escalate, leading to a denial of FAPE when the service dog was banned. The hearing officer reiterated that the team should have convened an IEP meeting prior to the service dog’s arrival and should have developed accommodations to integrate the student and her dog into the school setting.

## Can a school district require parents to submit insurance information and other proof prior to allowing the service animal to come to school?

Probably not. In *Alboniga ex re. A.M. v. School Bd. of Broward County, Fla* (Feb. 10, 2015), parents of a student with multiple disabilities asked for the assistance of a service dog at school to predict seizures, even though the staff was able to anticipate and identify the seizures. Before allowing the student to bring the service animal to school, the school district required proof of liability insurance and additional vaccinations for the dog that were not required by Florida law. The district also refused parents’ request that a staff member accompany the student when the service dog needed to be walked and required parents to hire a handler, relying on regulations that state public entities are not responsible for the “care and supervision” of service animals. The District Court found in favor of the parents, determining that requiring insurance as well as extra vaccinations constituted an impermissible discriminatory practice since no other students were required to expend such costs in order to attend school. While asking district staff to act as a handler would not be a reasonable accommodation, the court said assisting the disabled student in caring for his service animal is a reasonable accommodation.

# MENTAL HEALTH IN SCHOOLS

## What is the cause of the seeming uptick in mental health problems in schools?

Funding cuts in many states are impacting mental health services. In Illinois, the National Alliance on Mental Health Illinois (NAMI) issued a ‘white paper’ in May 2015 finding that since 2009, Illinois has cut over $113.7 million in general revenue funding for mental health services. NAMI found that after years of funding cuts “Illinois has a bare-bones publicly-funded mental health system. These cuts have made it impossible for service providers to build the infrastructure required to support the need of those living with mental health conditions.” NAMI Chicago, Chicago’s Voice on Mental Illness: *Making the Case for Funding and Supporting Comprehensive, Evidence-Based Mental Health Services in Illinois*. <http://www.namichicago.org/>.

Sandy Hook. On October 21, 2014, the Office of the Child Advocate in Connecticut released its report entitled “*Shooting at Sandy Hook Elementary School*” that included a review of the circumstances that pre-dated the mass murder that occurred on December 14, 2012. The October 2015 Inquiry & Analysis (a publication of the NSBA Council of School Attorneys) contained a comprehensive article entitled *How Schools Should Respond to Students with Mental Health Issues*; authored by Lawrence Altman, Lead Compliance Attorney, Kansas City Public Schools. The article posed two questions that schools should ask: 1) does federal law impose any obligations upon schools to provide assistance to students who have or might have some type of mental illness? (Child Find); 2) if the answer to the first question is in the affirmative, what steps might a school take to meet its legal obligations?

Complicated Child Find Issues. Child Find is an ongoing process through which all children, from birth through 21 (i.e., through the day before the student’s 22nd birthday), or who may be eligible for early intervention or who may be in need of special education services are identified, located and evaluated. Each school district is responsible for actively locating, identifying and evaluating all children who live within the district boundaries who may qualify to receive special education and/or related services. 20 USC §1412(a)(3); 34 CFR §300.111. All school districts must have written procedures for child find activities for all school children, including those attending private, charter, and/or religiously affiliated schools that include: 1) annual screening of children under the age of five to identify those who may need early intervention or special education services; 2) ongoing review of all children in general education classes; 3) ongoing coordination with early intervention programs like Child and Family Connections, Head Start, local preschools and daycare facilities; 4) coordination and consultation with nonpublic schools located within the district; and 5) referrals of children who might require evaluation for special education from parents, school staff, and representatives from community agencies. Child Find issues relating to the mental health needs of students can arise in various ways: 1) risk assessments - a student commits misconduct of a nature that results in a recommendation for a “risk” or “safety” assessment; 2) hospitalization - a student is hospitalized (perhaps repeatedly) and the school district finds out directly from the hospital; 3) mediation - a script is received from a parent for lithium, risperidone, etc., 4) crisis - a student is visiting the school social worker repeatedly to discuss a crisis situation; 5) truancy - a student has been absent (with or without cause) for an excessive period of time; 6) sexual harassment/sexual assault - the Office for Civil Rights issued a Q&A document in April 2014 addressing sexual violence on school campuses, stressing that students who are victims of sexual harassment or sexual violence may “develop” a qualifying disability under IDEA or Section 504. <http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/sex.html>.

## When do we place a student residentially?

School districts must provide a residential placement to a student with a disability at no cost to the parents if a residential placement is necessary to provide the student with special education and related services. 34 CFR §300.104. A school district’s responsibility to offer a residential placement turns on whether the student requires a residential placement to receive FAPE. If a student cannot obtain an educational benefit in a less restrictive setting, then a residential placement is appropriate. In situations where a student’s educational needs are inseparable from his/her emotional needs and an individual determination is made that the child requires the therapeutic and habilitation services of a residential program in order to “benefit from special education,” those therapeutic and habilitation services may be “related services” under the IDEA. In such a case, the school district is responsible for ensuring that the entire cost of that child’s placement, including the therapeutic care as well as room and board, is without cost to the parents. If a student’s social, emotional, and mental health programs are distinct from the learning process, and the student is able to achieve a reasonable educational benefit and make meaningful educational progress in spite of these problems, a residential placement will generally not be considered educationally necessary. In these situations, a school district may be required to finance only the educational component of the residential placement - the therapeutic components may be found to be the sole responsibility of the parents, a local mental health agency or other social service agency.

For unilateral placements, the U.S. Supreme Court established a two-prong test in *Sch. Comm. of Burlington v. Department of Educ.*, 471 U.S. 359 (1985) governing reimbursement for unilateral placements: 1) did the school district’s IEP constitute FAPE? If yes, then the parents are not entitled to reimbursement; 2) if no: does the facility/school that the parent chose allow the student to make progress? (note that this is a lower standard than the FAPE standard that the school district is required to provide.

For residential placements for medical care, school districts are generally not responsible for providing medical care to students. Visits to a doctor for treatment of medical conditions are not covered services under the IDEA and parents are generally responsible for costs associated with medical care. 71 Fed. Reg. 46,581 (2006). Richardson Indep. SD v. Michael Z., 52 IDELR 277 (5th Cir. 2009). In *B.J. v. Homewood-Flossmoor H.S.D. 233* (60 IDELR 115 (SEA Ill. 2012)), when a student’s OCD worsened and he was unable to attend school, the district provided homebound instruction. When that became untenable, the district offered a therapeutic day school and later a residential placement. The parents refused to consider any placement other than a psychiatric hospital focused on treating OCD (the Child and Adolescent OCD Center at Rogers Memorial Hospital in Oconomowoc, Wisconsin). The hearing officer found that though the IEPs developed by the district lacked essential elements and the district might have moved through the continuum of placements faster, where the student’s treating psychiatrist and therapist stated the student’s OCD was the most severe they had seen and worsening despite their treatment, the district could not reasonably be expected to do better. Additionally, the student’s OCD, not his lack of educational services, caused his lack of progress. The hearing officer found the residential placement proposed by the district (Yellowstone Boys’ and Girls’ Ranch in Billings, Montana) was appropriate to meet the student’s educational needs. The parents’ preferred placement at Rogers Memorial Hospital was not appropriate because it was primarily a psychiatric residential facility focused on treating mental health issues.

## What are the Child Find obligations during unilateral residential placements?

Under Illinois law, even in situations where a child is unilaterally placed either out of state or otherwise outside of the school district’s boundaries, the school district where the parents reside continues to have a child find obligation to the child. *Jefferson County Sch. Dist. R-1 v. Elizabeth E. by Roxanne B. and David E.*, 60 IDELR 91 (10th Cir. 2012) should be required reading for all special education directors throughout the country. The Colorado school district sent the following letter to the parents: “[B]ecause you unilaterally placed [Elizabeth] in Idaho, the District does not presently have an obligation to evaluate, convene IEP team meetings for, or otherwise serve Elizabeth under the IDEA. However…the District stands ready, willing and able to evaluate and provide Elizabeth with a free appropriate public education upon her return to the District.” This is the wrong answer!!! We are obligated to evaluate.

## What are the notice requirements for unilateral placements?

The 10 business day notice is contained in the IDEA itself and provides that a parent’s request for reimbursement for a unilateral placement can be reduced or denied if they fail to provide 10-business days’ notice in advance of the placement. 20 U.S.C. 1412(a)(10)(C). You should take the following steps when you receive a 10-day unilateral placement notice letter: 1) convene an IEP meeting to consider parents’ request. It is imperative that the IEP team consider “residential placement as one of the placement options. Recommend residential placement if appropriate. If not, document specifically why the school district members of the IEP team do not believe that a residential placement is appropriate to ensure the provision of FAPE to the student; 2) review the student’s current placement/services to ensure that they are appropriate. Review and modify related service minutes if necessary and appropriate; 3) ask parents to consent in writing to the exchange of records and information between school district personnel and private providers, if any; 4) make a standing request in writing of parents to provide you with copies of evaluation, hospital reports, etc. When and if provided, IEP team needs to meet again to consider; 5) ensure adequate data is being compiled that supports the school district’s placement recommendation.

When you receive notice that a unilateral residential placement has been made, take the following steps: 1) convene an IEP meeting and treat parents’ action in making the unilateral placement as a request for one. Do this even if the parents are indicating that they aren’t asking the school district to pay for the placement. This is food information to document in an IEP summary and parents might eventually change their minds. It is imperative that the IEP team consider residential placement as one of the placement options. Recommend residential placement if appropriate. If not, document specifically why the school district members of the IEP team do not believe that a residential placement is appropriate to ensure the provision of FAPE to the student; 2) review the student’s current placement/services to ensure that they are appropriate. Review and modify related service minutes if necessary and appropriate; 3) ask parents to consent in writing to the exchange of records and information between school district personnel and private providers, if any; 4) make a standing request in writing of parents to provide you with copies of evaluations, hospital reports, etc. When and if provided, IEP team needs to meet again to consider; 5) comply with all applicable timelines, including annual review and reevaluation timelines. Just because a student is unilaterally placed does not mean that timelines do not apply.

## How should we treat private recommendations and diagnoses?

When a private report/evaluation is received, the IEP team must, at a minimum, convene an IEP meeting to review and consider all private recommendations made by a physician or other individual working with the student. This is true whether the school district paid for the evaluation or not. In situations where the school district is rejecting recommendations from a private physician/therapist, the IEP notes should be comprehensive, specifically listing the recommendation and the reasons why the IEP team decided to reject it. It is critically important that the IEP notes record this information; otherwise, a hearing officer or court will likely conclude that the IEP team did not seriously consider the private information.

Rejecting diagnoses is slightly more complicated because presumably the private provider evaluated or otherwise administered assessments to the student to reach a diagnostic conclusion. If the IEP team disagrees with a diagnosis in a contentious situation, the team can ask that a private physician or therapist of their choice review the student’s records and/or assess the student to either confirm or deny the diagnosis.