

## DC Special Education Reform Summary – updated August 2016

Three new laws went into effect on March 10, 2015 that reform DC's special education system – protecting student rights, enhancing service delivery, supporting teachers and improving quality and capacity throughout the special education system.

The special education reforms were passed by the DC Council in late 2014 and have now cleared mandatory Congressional review, which is required for all legislation passed by the DC Council. Children's Law Center helped shape the bills, which also drew from the experience of teachers, parents, lawyers and experts in the field to determine how to best meet the needs of our students with special needs.

Included below is a summary of the new laws. Some of the changes went into effect immediately, other reforms will be phased in at later dates, and still others will go into effect only if there is funding. Provisions went into effect on March 10, 2015, unless a different effective date is noted below.

### **Special Education Student Rights Act – DC Act 20-486**

The Special Education Student Rights Act ensures that families of students with special needs are informed, empowered and engaged in their children's education. To do this, the legislation provides DC parents with the same procedural safeguards that exist for parents in many other jurisdictions. Provisions of this law are now in effect, unless otherwise noted.

Specifically, this law requires the District's Local Education Agencies to do the following:

- **Notice of Change of Location:** Written notice must be given to parents before initiating a change to a student's location of services and must provide details about the proposed change and reason for the proposal. Parents also must be provided with written information about their procedural protections.
- **Resources for Parents:** Written notice must include information about the Office of the Ombudsman for Public Education, Office of the Student Advocate, and other resources that can help parents resolve problems related to their children's education.

- **Requirements for Special Education Meetings:** At least 5 business days before a scheduled meeting about an Individualized Education Program, Individualized Family Service Plan or eligibility for special education services, parents must be given copies of written documents that will be discussed. If a meeting on these topics is scheduled within less than 5 business days notice, then the documents must be provided to parents no fewer than 24 hours before the meeting. In addition:
  - Parents must be given the final Individualized Education Program plan within 5 business days after the IEP meeting. If the IEP has not been finalized by then, the Local Education Agency must provide parents with a copy of the draft IEP within 5 days of the meeting, and then must provide a copy of the final plan when it is done. A final IEP must be provided no later than 15 days after the meeting at which the Individualized Education Program was agreed upon.
  - Parents also must be given final Individualized Family Service Plans within 5 business days after the IEP meeting. If the Individualized Family Service Plan has not been finalized by then, the Local Education Agency must give parents a copy of the draft Individualized Education Program within 5 days, and then must provide a copy of the final plan when it is done. A final Individualized Family Service Plan must be provided no later than 15 days after the IEP meeting.
  - The law contemplates that one reason a plan may be delayed is to comply with the Language Access Act but specifies that this does not permit delay past 15 days.
  
- **Observation:** Parents – or their designee – are entitled to observe their child in his or her current or proposed special education classroom.
  - Parents may also bring with them, or send in their place:
    - A person with professional expertise in the area being observed.
    - A person to facilitate observation for a parent with a disability or provide language translation assistance.
    - Designees cannot be persons representing the parent in active litigation against the school or with a financial interest in the litigation.
  - The Local Education Agency must allow sufficient time for classroom observations and shall not place conditions or restrictions except to:
    - Protect the safety of the children in the program.
    - Protect other children in the program from disclosure of confidential and personally identifying information.
    - Avoid potential disruption from having multiple observations occur at the same time.

- People who observe a classroom are not allowed to use any information gained to recruit new clients in litigation against the District or the Local Education Agency.
- **Burden Shift** (*Effective Date: July 1, 2016*): Generally today, the party filing for a due process hearing bears the burden of production and persuasion. Under the new law, in cases where the dispute is about the educational program or placement, the burden of persuasion falls on the public agency after the parent establishes a “prima facie case.” If the party is seeking tuition reimbursement for a unilateral placement, then the burden of production and placement remain with the moving party.
- **Expert Fees** (*Effective Date: Proceeding Initiated after July 1, 2016*): Parents who prevail at a special education hearing can recover reasonable expert fees up to \$6,000 for the cost of retaining an expert witness.
- **Transfer of Rights**: Parents must be notified that adult students are presumed competent, no less than one year before the child reaches 18, and advised of the options regarding decision making. Students over 18 will now be able to permit others to make educational decisions for them as follows:
  - Through a process established by OSSE where a student has been determined unable to give consent and an adult has been appointed to represent the interest of the student, with the student retaining the right to challenge decisions; or
  - Delegation of their educational decision-making rights through a power of attorney.
  - Adult students may also choose to receive support from another adult to make educational decisions, also known as Supported Decision Making.
- **Community Review Panel**: A new seven-member community review panel will review hearing officer candidates for special education due process hearings.
- **Attorney Abuse**: The chief hearing officer can restrict attorneys from special education due process hearings if they are found to engage in a pattern of frivolous pleadings.

## **Enhanced Special Education Services Act – DC Act 20-487**

The Enhanced Special Education Services Act focuses increases and improves special education services and brings the District's practices in line with national best practices to ensure children with special needs have every tool they need to grow and succeed. This law also makes many necessary changes to the DC Code to reflect the creation of the Office of the State Superintendent for Education (OSSE). Many of the provisions of this act are subject to funding and will not go into effect in 2015.

Specifically, this bill includes:

- **Transition Planning (Effective Date: Upon funding; was not funded in DC Fiscal Year 2016 or 2017 budgets for the earliest possible July 1, 2016 start)**: Schools will be required to prepare students for adulthood at a younger age for a more successful transition. This includes:
  - Transition planning, assessment and services must begin with the first Individualized Education Program in effect when a student turns 14 (rather than the current requirement of 16). At least a year before a student is anticipated to leave high school, the IEP team must identify which adult services may be appropriate for the student and what evaluations are needed to determine the student's eligibility for those services.
- **Early Intervention (Effective Date: Upon funding; was not funded in DC Fiscal Year 2017 budget for the earliest possible start of July 1, 2017)**: Children up to age three will be eligible for early intervention services (IDEA Part C) if they have a 25% delay in just one developmental area. This expands eligibility from the previous standard, which required infants and toddlers to display a 50% delay in any one area or a 25% delay in two or more areas.
  - In addition, by October 2015, OSSE shall issue a report on further expansion of early intervention services, to include recommendations for: 1) expanding early intervention eligibility to students who are at risk of experiencing delay because of social/environmental factors; and 2) changing the Part B definition of developmental delay to match the new Part C definition.
- **Evaluation (Effective Date: Upon funding; was not funded in DC Fiscal Year 2017 budget for the earliest possible start of July 1, 2017)**: Children who have been referred for a special education evaluation must be evaluated within 60 days from parental consent or 90 days from referral (this reduces the timeframe from the current standard of 120 days). Referrals may be made orally or in writing.

## **Special Education Quality Improvement Act – DC Act 20-488**

The Special Education Quality Improvement Act improves oversight, capacity and cooperation within the various parts of the DC education system. Provisions of this law are now in effect as summarized below, unless otherwise noted.

Specifically, this bill includes:

- **Lottery Preference**: Charter schools will be able to establish a preference for students with an Individualized Education Program or particular disability. This will assist the charter school sector as a whole to plan and build high-quality, targeted programs for special education students. Schools must apply to the Public Charter School Board for approval for a lottery preference.
- **Dependent Local Education Agencies** (*Effective Date: August 1, 2017*): Each current charter schools must become its own Local Education Agency for the purpose of Part B of the IDEA no later than August 1, 2017. The Public Charter School Board can make an exception for a school with more than 90% of its students entitled to receive services pursuant to an Individualized Education Program. No new charter school can elect to be treated as a DC Public School for purposes of Part B of the IDEA.
- **Enhancement Fund**: A funding mechanism will be established so that unspent special education funds can be reinvested to expand capacity and service offerings.
- **Ombudsman**: Expands the authority of the Ombudsman for Public Education to observe instruction in the school and identify school level concerns.

## **Special Education Legislation: Frequently Asked Questions**

1. The law gives "the parent's designee" the ability to observe, but says that the designee must have professional expertise in the area of special education being observed. Who will qualify to observe under this provision?

*The parent's designee needs to have one of the following qualifications: 1) he or she must be an expert in the area of special education being observed; 2) be necessary to facilitate an observation for a parent with a disability; or 3) provide language translation.*

2. The law says that the designee can observe if they are not representing the parent's child in litigation. Will expert witness be considered to be representing the parent's child or will that just apply to attorneys?

*This applies to attorneys. Those with a financial interest in the outcome of the case are also barred once a case has been filed. It is possible if an expert is paid on a contingency basis (only paid if the parent wins), the school might win an argument that the financial interest provision applies.*

3. The law talks about the observer not using any information obtained during the observation for the purpose of seeking or engaging clients in litigation against DC or the Local Education Agency. Does that mean that the observer can't testify about what is observed?

*No. That means an observation can't be used to recruit other children in the class as clients by attorneys.*

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