

The Five Issues Most Likely to Succeed (in causing friction between parents and schools):

Addressing Legal Issues that may Lead to Litigation

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Introductory Note: This list is based on two sources of information: (1) my own experience in talking to parents seeking legal assistance to resolve their disputes with School Districts and Area Education Agencies and (2) input from parent advocates working for the Ask Resource Center and the Parent Training and Information Center of Iowa. Questions concerning this list may be directed to CurtSytsma@Yahoo.com.

1. Denial of evaluation: Has the parental right to a full and individual evaluation been wrongfully delayed to permit the completion of general education interventions?

Primary authority: U.S. Department of Education, 71 Fed. Reg. 46658-59 (August 14, 2006): “If parents request an evaluation and provide consent the [60 day) timeframe for evaluation begins and the information required . . . must be collected (if it does not already exist) before the end of that period.” “The 60-day timeframe refers to 60 calendar days and would include school breaks.” The 60-day timeframe can be extended to accommodate general education interventions, but only “with *mutual written agreement* of the child’s parent and the eligibility group.” (Emphasis supplied).

2. Inadequacy of notice: Does the School District or AEA have documentation that they have notified the parents of the right to a full and individual evaluation in 60 days, regardless of the use of general education interventions?

Primary authority: 34 C.F.R. § 300.311(a)(7)(ii): If a “child has participated in a process that assesses the child’s response to scientific, research-based intervention,” the “documentation of the determination of eligibility” must include the “documentation that the child’s parents were notified about—(A) The State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the child’s rate of learning; and (C) *the parents’ right to request an evaluation.*” (Emphasis supplied).

3. **Denial of entitlement: Has entitlement been denied because the student is performing on par with his or her peers or because he or she is receiving passing grades?**

Primary authority: 34 C.F.R. § 300.309(a)(2)(ii): The group making an eligibility determination “may determine that a child has a specific learning disability . . . if the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, State-approved grade-level standards, or *intellectual development*. . . .” (Emphasis supplied).

Additional authority: *Mr. I. Ex rel. L.I. v. Maine School Admin. Dist. No. 55*, ___ F.3d ___ (1st Cir. 2007): “Indeed, a child may ‘do well in school’ without special education, accumulating a high grade point average, but may nevertheless perform below acceptable levels in other areas, such as behavior.”

4. **Denial of entitlement: Has entitlement been denied because the student’s needs can be met through a 504 plan?**

Primary authority: *Yankton v. Schramm*, 93 F.3d 1369, 1376 (8th Cir. 1996): “Although an individual who is eligible for services under IDEA may also qualify for assistance under the Rehabilitation Act of 1973, the school district must comply with both statutes. . . . Under the statutory scheme, *the school district is not free to choose which statute it prefers . . .*.”

Additional authority: *Mr. I. Ex rel. L.I. v. Maine School Admin. Dist. No. 55*, ___ F.3d ___ (1st Cir. 2007): “The district also directs us to the more restrictive meaning of the term ‘disability’ under Title II of the Americans with Disabilities Act and the Rehabilitation Act. Because the IDEA contains its own definition of the term, however, its appearance in other acts of Congress is of little moment. Putting aside the difference between the legislative goals of the IDEA and these other acts, then, the IDEA simply defines ‘disability’ differently than they do. . . . This clear disparity in text puts the district’s suggestion that we look to those other acts in construing the term ‘disability’ here on par with comparing ‘plums and pomegranates.’” (Citations omitted).

5. **Appropriate services: Are they based on peer-reviewed research to the extent practicable?**

Primary authority: 20 U.S.C. § 1414(d)(1)(A)(i)(IV): “The term ‘individualized education program’ or ‘IEP’ means a written statement for each child with a disability . . . that includes . . . a statement of the special education and related services and supplementary aids and services, *based on peer-reviewed research to the extent practicable*, to be provided to the child, or on behalf of the child” (Emphasis supplied).