Law in the Political Community Assignment #2: Special Education in Public Schools

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**Legal Rights and Questions**

To Peter and Pamala Parent regarding Billy’s legal and social concerns in the Americanville School District. To begin the first part in ensuring his academic success, we will pursue in addressing your child’s legal rights as well as the school districts obligations, and any limitations that would be to your concern on each of the set of sections. As Billy is 3 years of age, I would like to inform you that under IDEA (Individuals with Disabilities Education Act) he no longer qualifies for EI (Early Intervention Services) and will be required to head straight into the realm of Special Education. To better inform you on your knowledge of IDEA, the act was enacted in 1975 and later revised in 2004, than again in 2015 (Gov.info, n.d.). Under the act it is important that I inform you on all the subsections that will be important into ensuring Billy’s social and education success, as well as for you the parents to know his rights.

Under IDEA it is important to know that the statute requires Section 1401 (9) FAPE (Free appropriate public education) to be enacted in the school district and that “have been provided at public expense, under public supervision and direction, and without charge (Legal Information Institute, n.d.).” You, the parents shall not have to pay for Billy’s requirement to a free education as the funds come federally, with support of his ASD1 diagnosis. I shall highlight the importance of the term A (appropriate) in FAPE as its appropriation is specific to Billy as an individual. This is to “include an appropriate preschool, elementary school, or secondary school education in the State involved (Gov.info, n.d.);” but may I also mention the teachers or therapists in Billy’s area may want to provide the best learning experience, the school district is not required to, but rather required to an appropriate one (autism speaks, n.d.). This means that it is important for you as parents to be collaborators with the school in a sense of communication to ensure Billy’s success as well as to know if his rights are not being granted.

Next under IDEA I want to inform you about LRE (least restrictive environment) and what that means for Billy. Under Sec. 300.114 (a)(2) the statute requires that to the highest measures appropriate for Billy which includes either a public education or a private one, that he is educated with other children who are not with disabilities. It also requires that the only acceptable form for Billy to ever be removed and put into special classes or schooling, that is separate from those without disabilities is “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (Legal Information Institute, n.d.).” So, if Billy were to be removed and placed into another area it would be because the spectrum scale has required for a more tailored engagement.

With this last part being said, it is important for us to now transition into talking about another aspect under the IDEA that is specifically important to Billy’s progress, socially and educationally. This section is known as what Billy’s IEP (individualized education program) will be, which will be important in setting goals, and defining his strengths and weaknesses. It will also play a crucial part in determining the details that need to take place to ensure he reaches objectives. It is important that I note, that while he is potentially eligible with his diagnosis he is not automatically required to an IEP. His ASD1 diagnosis “must adversely affect the student's educational performance, limiting their ability to access the curriculum or make progress in the general education environment (Wolmark, 2024).”

If his learning and social interactions hinders it will be required under IDEA an assessment and evaluation process that includes special education teachers, speech-language pathologist, and psychologists. That composed team will then begin the process. It is your job as parents to provide the team with existing information for them to review. These are records, medical history, any previous assessments from either previous therapists or teachers if Billy has had them (Wolmark, 2024). Observations will be conducted in the classroom or in different settings to determine how social interactions occur, communication skills, and how he does academically. The tools that will aide in determining the results are standardized assessments that will calculate cognitive capability, speech, and language skills, as well as emotional intelligence and functioning. It is also important again as parents to collaborate with the team to provide input on behaviors, challenges, development, and any other valuable information when the child is with you and not at school.

Now that I have given you a broad generalization of the IEP, lets now look a little more in depth into the process, and what to expect in future, if of course Billy needs one. This is now more of a time frame legal analysis that I am providing you with. May I note that process ignites when and if Billy doesn’t respond well to changes in the classroom, such as instruction, or any other area into the learning environment. You as parents also have the right to refer him yourself if you notice his learning has hindered. Then, the school will test for eligibility later. There are 7 steps that will help you better understand his legal rights to an IEP and the steps you need to take. First one referral, which occurs when school admin or personnel deems it necessary. Here is where you, the parents step in. You both to allow this will be notified by the school to provide a written “informed consent”. They cannot proceed to evaluate Billy unless this form has been signed. Next the evaluation like I briefly mentioned previously, where the assessment must be conducted within a time of “60 days of receiving parental consent or within state-established timeline (IRIS, n.d.).” Next is the Eligibility determination that personnel will handle that mainly answers two questions regarding if the student has a disability, and if he or she does “affect the student’s academic and/or functional performance to such an extent (IRIS, n.d.)” that it is time to require the services under IDEA. After that than comes the development state which must have occurred within 30 days after eligibility determining (IRIS, n.d.). This is when the IEP team I mentioned before meets which also includes you the parents, and Billy the student at times, get his documents that you have provided. This begins to supply services, annual goals, professionals that will be provided, communicating with you progress, time frequency, and the settings in which Billy will be in also called placement (IRIS, n.d.). Then the IEP will be implemented. Annual reviews will occur as well as re-evaluations that must take place one every three years (IRIS, n.d.). Re-evaluations take place to see if eligibility is still a determining factor. Unless the IEP Team along with you the parents agree to not meet any more, the reevaluations must occur (IRIS, n.d.). Your child, if given an IEP is also federally required to receive assistive technology from the school district, as they are responsible to provide to maintain your child’s functional capabilities (Autism Speaks, n.d.).

**Legal/non-Legal Options if District is Uncooperative**

You as parents have the right under the 14th amendment to a due process hearing if for various reasons the school does not comply or is uncooperative. Under the 14th amendment “no state shall deprive any person of life, liberty, or property, without due process.” Some reasons to consider requesting a due process hearing would be if they deprived Billy of his liberty which can also be interpreted as freedom to learn. Before we would get into filing a due process, school districts have lawyers and law offices where a mediation can try to be sorted out. A mediation is an agreement that both parties can try to come to terms with, as a licensed mediator will listen and host the whole meeting. If the refusal still has occurred and an agreement does not happen there is further legal action to be done. Some scenarios that could fall under this category would be if the school just refused to not evaluate Billy for his referral to receive an IEP. If they deem him as ineligible and you disagree with that decision, you have the right to the due process hearing. If the Billy does qualify for an IEP but does not receive the assisted technology that is supported Federally, you have the right to a Due Process hearing. After the Due Process is filed you and the opposition will go before a hearing officer and action will be taken (Library of Congress, n.d.).

**Public Or Private Education**

You as the parents are unsure if public school is the route to go. You are possibly thinking about private school for Billy. As read in your concerns previously that you were worried about Billy learning and the school district not necessarily meeting your testing scores in special education, I strongly advocate to send Billy to public school. Although even if you were to enroll Billy to private school which means FAPE wouldn’t be an issue anyways, there are still some concerns I have and feel the need to address. According to IDEA “depending on state law, private schools may not be required to meet state personnel or curriculum standards (IDEA, 2024).” This means that even though Americanville School District typically scores lower in Special Education Scores, they still have to meet that standard. If in a private school Billy does not receive the IEP or for any instance needs certain protections explained previously, “IDEA’s due process procedures do not apply to issues regarding the provision of services to any particular parentally-placed private school child with a disability (IDEA, 2024).” It would be considerably smart to stick to private school to get the protections under IDEA, not pay out of pocket for recourses, and be able to file a Due Process complaint if needed.

I hope this memorandum meets your expectations and has given you the information that you desired. Remember the main goal is provide Billy with all the recourses he needs to learn and become socially intelligent. Billy has rights and should never be discriminated upon based off his disability. He never should be limited especially in his opportunities to learn.

**Recourses**

Autism Speaks. (n.d.-a). Autism in schools: Your child’s rights. Autism Speaks. <https://www.autismspeaks.org/autism-school-your-childs-rights>

Govinfo. (n.d.-a). U.S. Code Title 20: Education, Chapter 33, Subchapter I, Section 1401. <https://www.govinfo.gov/content/pkg/USCODE-2023-title20/pdf/USCODE-2023-title20-chap33-subchapI-sec1401.pdf>

Legal Information Institute. (n.d.-b). Definition: Free appropriate public education from 20 USC § 1401(9) | LII / Legal Information Institute. Legal Information Institute. https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def\_id=20-USC-418464004-1668559971&term\_occur=3&term\_src=title%3A20%3Achapter%3A33%3Asubchapter%3AI%3Asection%3A1401#:~:text=(9)%20Free%20appropriate%20public%20education,%3B%20(C)%20include%20an%20appropriate

Library of Congress. (n.d.-b). Overview of procedural due process | Constitution annotated. Congress.gov. <https://constitution.congress.gov/browse/essay/amdt14-S1-5-1/ALDE_00013747/>

U.S. Department of Education. (2024, May 1). Questions and answers on serving children with disabilities placed by their parents in private schools (rev. Feb 2022). Individuals with Disabilities Education Act. <https://sites.ed.gov/idea/idea-files/questions-and-answers-on-serving-children-with-disabilities-placed-by-their-parents-in-private-schools/>

IRIS Center. (n.d.-a). What is the school administrator’s role in overseeing the IEP process?. <https://iris.peabody.vanderbilt.edu/module/iep02/cresource/q1/p01/#content>

Wolmark, M. (2024, January 12). Does autism automatically qualify for IEP?. In-Home & Center-Based ABA - Golden Steps ABA. https://www.goldenstepsaba.com/resources/does-autism-automatically-qualify-for-iep#:~:text=Each%20student’s%20needs%20must%20be,may%20qualify%20for%20an%20IEP.