

## Your Legal Rights

Narrated by Chris Placitella

- CP: Good Morning! And welcome to Your Legal Rights. I am a partner here at Wilentz, Goldman & Spitzer. This week's program focuses on IEPs for Special Education. Special Education is a absolutely imperative subject matter to understand in order to deal with rights as they relate to education. There is no greater issue that bores of education and parents of special education children than IEPs and special education a law today here in New Jersey. As always, the information that you are provided is information only. It is not a substitute for in-person consultation with your attorney. The information we want to talk to you about today is about primarily about New Jersey law and should you have any questions during this broadcast you can ask this question by typing in on the box below and we will attempt to answer those questions. If you watch this program after the broadcast is over in the on-demand section of our website, you'll have the equal opportunity to ask questions by typing in on the interface there. But again, we are only providing you with general information. This is not an attorney-client relationship obviously but we are here to help you better understand the issues so that when you do meet with an attorney or discuss issues amongst yourselves, you'll be better informed as to the issues involved. Now, we're fortunate again to have Vi Lordi who is one of the foremost authorities on this subject matter and because of the overwhelming response we have got from her broadcast last time, we've asked her to come back this time and focus strictly on the issue of IEP. So with that being said, Good Morning Vi!
- VL: Good morning Chris!
- CP: Thanks for coming back again.
- VL: My pleasure.
- CP: Okay, let's start out. IEP. Three of the most important letters a Board of Education or someone involved in Special Education needs to know and understand in this day and age. What is an IEP?
- VL: IEP stands for the words Individualized Education Program. An IEP is a document – a contract of sorts between the parents or guardians of a minor student or the adult student in the school district or school board with respect to the educational program that's going to be provided the educational disabled youngster. It is an extremely important document. It serves as the guide, the map for teachers and related service providers as they work with the youngster throughout of the course of the year. An IEP is good, if you will, for one year at a time.
- CP: And who is involved in constructing the IEP?

- VL: Members of the IEP team. Now the IEP team consists of among others, the youngster's teachers, special education teachers, regular education teachers, if need be, if they're involved in the mainstreaming of the youngster with respect or inclusion of the youngster in some regular education courses. The youngster's case manager who is a member of the child study team in most instances, someone else in the school district who has particularized knowledge with respect to what the school district can offer. That is frequently the case manager, perhaps it could be an administrator or vice principal. The Mom and Dad are guardian of the minor are always members of the IEP team. The adult student, a youngster who has reached 18 who is no longer a youngster but an adult is a member of his or her IEP team.
- CP: Now, is the IEP format or mechanism the result of some statute or law that people should be aware of.
- VL: The IEP is a document that is required by the Individual's with Disabilities Education Act. It's a federal statute. Some people refer to it as IDEA. I refer to it as IDEA as do many other people. Here in New Jersey, the IDEA is implemented through the New Jersey statutes and specifically to what people refer to as the special education code. In education we often refer to it as the Code and that's New Jersey Administrative Code 6A:14.
- CP: Now, what are the – I'm assuming that there are individual elements to an IEP plan.
- VL: Yes.
- CP: What are they and how are they constructed?
- VL: The – there – in my view, there are three crucial components of an IEP. The PLEP – that's the present levels of educational performance to the 1997 amendments to the IDEA and to our state requirements, the PLEP used to be called current educational status. What the PLEP does – the present levels of educational performance does is to describe the youngster's needs. Where is the student at this time, how does the student perform on standardized testing – the last standardized test? How does the youngster perform in the classroom, not only his grades in math or reading – how is he interacting with other students and the like. And the present levels of educational performance should also include comments, concerns articulated by the parents. Also, this area should contain any information regarding related services that are provided for the youngster. For example, how's he doing in occupational therapy, how's he doing in physical therapy. Perhaps, there's speech and language services that the youngster is receiving. How is the student doing in that area? The PLEP is really the foundation upon which the IEP is built because it described the youngster's educational needs.

- CP: Now, this is probably a question I should have asked you at the beginning. Who qualifies or how does one qualify for an IEP? I mean, how do you get from being a student in the classroom that is struggling or maybe they're not even in the classroom but a student that's struggling and there a team working for you.
- VL: The -- our laws provide for the evaluation of youngsters who are demonstrating the need for additional services who just aren't succeeding in school and one can start the evaluation process either through the request of the parent, the suggestion of a teacher and then what happens is once the determination is made whether we want to explore whether or not the child should be evaluated because other interventions haven't worked and that's something that I should point out. It's very important before school staff gets to the point of saying "yes" let's evaluate the child for special education and related services to try other interventions. The Department of Education encourages this very strongly, as it should in my view. There are, in our schools, committees that used to be called PAC Committees – pupil assistance committees. And, I understand that it is called – because the language is always changing IR&F Committee.
- CP: It seems like alphabet soup here. How do we keep it all straight?
- VL: Exactly. The bottom line is try to help the child do well in school or experience some success with interventions, perhaps sitting closer to the blackboard. Its not even called blackboard anymore. But sit closer to the front of the room if there's a visual or hearing problem, or perhaps an attention issue. Try to give a little personalized attention to the youngster. Is those sorts of interventions and others that the educators think up don't work, then the next step is to look to evaluate. And what we then is an identification meeting at which members of the school staff sit down with the guardian or parents and determine whether or not this is a child that needs to be evaluated.
- CP: Can this start before a child starts school?
- VL: Oh yes, yes. Youngsters that are disabled as young as three, can be evaluated as preschool disabled youngsters. Determination made whether or not they are eligible at that early age for special education and related services. And of course, those experiences in special education will encourage the early provision of services because the goal of special education services is always to help the youngster no longer need special education. So, the earlier you start, the more hopeful that special education may not be needed down the road.
- CP: So, we start with the PLEP. And what are the other elements of an IEP?
- VL: Yes. The building from the PLEP, we get to the program. One cannot determine or develop a program until we know what the educational needs are. The program includes the goals and objectives, annual measurable goals for the student and benchmarks of short term objectives toward achievement towards those goals. The child should sit closer to the board. A youngster with a learning

disability may need to have math problems read to him or her if there's some dyslexia, for example, that the youngster experiences. Discussion of least restrictive environment moves us on to the next component and this is just a short hand description that we can talk an hour about of each topic. We move on then to the next very important which is the placement of it. And before you can determine where you're going to place a youngster, you need to determine what the needs are, what the program is, what the youngster needs in terms of – how you're going to satisfy those needs and then the question becomes where? And when you are looking at where what you want to find is the least restrictive environment for the youngster, the congressional preference, frankly the neighborhood school, but very often the neighborhood school is not the right place where the program can be implemented and we go for the least restrictive environment analysis.

CP: And I know that's where a lot of the tension comes in. Everybody – it works together for the first two phases of this and then they determine well, what are – how are we going to deal with child, where are we going to put this child? Serving on two school boards, I see this all time and that's where it gets somewhat contentious and how are these determinations made at this point as to where the child is best placed.

VL: The determination is made in the first instance by the IEP team. Through much discussion, sometimes school district staff really can get a very good handle on how to provide a program in district. Getting the teachers working with the related services providers so that the youngster can stay at his or her neighborhood school. Sometimes just walk to school with mom or friends in the morning, or dad and friends in the morning. Frequently, however, the neighborhood school can not accommodate the youngster's educational needs and then we look to first other public school settings, perhaps another public school in the district and other times, out of district schools, which are approved by the State of New Jersey, private schools for the provision of educational services for educational disabled children.

CP: Now, as I understand it, currently, the cost for these programs – and they are not inexpensive – is borne by the school board.

VL: That's correct.

CP: Are there any alternative funding sources at this point, because I know there's a tension because parents are trying to do the best they can for their child and the school board is trying to do the best it can for the child then, they're also answering to the taxpayers. Are there any alternatives or assistance that the school boards can look to or are we still trying to follow this legislatively?

VL: Well, they said this is the \$64,000 question. The burden is on the school district and far predominance of the situation. From time to time with youngsters who require residential placements, perhaps, logistics for example. The division of

developmental disabilities may be willing to step in and help with the school district's costs associated with the residential placement of a youngster in that type of situation. But the bottom line is that under the IDEA, the responsibility for providing educational services which often involve residential placement lies with the school district.

CP: I guess that's my question because I know that in some circumstances where the child needs assistant beyond the school day. The IEP actually reaches into the home and there are supplemental services that are provided in the home. And I guess just to finish it off are there additional funding sources when you get to that level or is it still the local school board that has to deal with this?

VL: In my experience, in the absence of the kind of assistance and the specialized cases I spoke about with respect to GDD, the responsibility lies with the school district. You see more and more of what have come to be called wrap around programs for youngsters with significant disabilities, again, acoustic instances where there is parent training going on in the home. There's applied behavioral analysis provided for some hours in the home at night. That in my experience has primarily been the responsibility of the school district. Sometimes, you can see a course hearing between the parents and the school district. But the buck stops with the board more often than not.

CP: Now with respect to placement in a classroom, which is the preferable way to go if possible . . .

VL: Right

CP: if the child qualifies. How is that generally done or how should it be done. If you say, well this child is, had a level that they could benefit for being in the classroom, how is that done, how should it be done?

VL: Well, if the youngster is doing to be placed at the neighborhood school in, a third grader for example, there's discussions about what appropriate classes there are in the school district. Perhaps it's a what, we used to have what we called self-contained, we see fewer and fewer of those. More and more districts moving away from that because the state understandably under the IDEA is encouraging school districts to education youngster in the regular education classes, what we're calling now the general education classroom and it's really a group effort to figure out what's the right classroom in the school for the youngster, but ultimately that responsibility in terms of classroom assignment lies with the school district.

CP: Now if a child is put into a general education class, what if any obligation does the school district have to provide additional teaching assistance in that classroom.

VL: The IEP team will determine whether or not the student needs an aide in the classroom to help the child move along with the curriculum with the rest of the

children in the classroom. There are also options to provide special education students with in class support in the general education environment, where you have a certified teacher of the handicapped who actually works in the classroom with that student and perhaps with other educational and disabled students to help the youngster move along again with the curriculum and then what you'll see is a close working relationship between the in class support teacher and the general education teacher so that they're working in sync.

CP: Now, I know that when it's done well, for instance, my daughter goes to Colts Neck and I think they do it so well that there is extra help in the classroom and she thinks that she's in a privileged class because they have more than one teacher and the children don't know. It's just done very, very well and I'm assuming that's where we're trying to.

VL: The goal is to have a seamless transition in the classroom with the in class support teacher working perhaps with, definitely actually with a disabled child, but perhaps helping other children as well, so as not to make the disabled youngster stand out in a negative way. Fading back when necessary. Aides do that frequently and very well. Fading back, perhaps helping other children so that the aide becomes a member of the class.

CP: Correct, and are there guidelines with formal or through you experience that would indicate if that's what you were attempting to do when you have say four or five children in your district that needed special attention that you instance wouldn't put them all in one class because it may overburden the rest of the students in the classroom or teacher, so you maybe want to put two or three in this class, two over hear, are there any kind of guidelines or recommendations that are made on how you accomplish those things?

VL: That would be an administrative decision. Well, the IEP team determines where the placement is. The case manager together with the administration can look at the appropriate distribution, but the goal ultimately is to make certain that the child is in a class where his or her educational needs are being met and that of course administrative concerns do not presence, don't slump satisfying the educational needs of the youngster. But certainly the distribution in terms of making certain that the youngster is getting the kind of attention he or she needs is paramount.

CP: One of the questions we just received was do all school districts have this program?

VL: Yes. Well all school districts in our state of New Jersey are required to address the educational needs of disabled youngsters.

CP: Now, I'm going to come from left field with this question. But I know it's been raised in other contexts. How does the IEP now interact, if at all with the no child left behind mandates?

- VL: Well, the no child left behind mandates provide of course for quality education for every youngster and those youngsters in my view who are being appropriately serviced through the IDEA were fine before the no child left behind act and are going to be fine afterwards. As long as the school district is appropriately and adequately implementing the requirements of the IDEA, which you have in the No Child Left Behind Act of course are requirements with respect to teacher qualification and state schools and the like.
- CP: I guess more pointedly, in the No Child Left Behind evaluations, there are statistical analyses going on . . .
- VL: Yes.
- CP: And do the children, do the children who have IEPs and integrated into these classrooms, are they treated just like any other child when looking at the satisfying the No Child Left Behind statistics?
- VL: Let me see if I can try to answer that question.
- CP: It's a loaded question.
- VL: Well yeah, but I understand. In terms of statistics, of course one looks at how the children are doing overall and there are specific categories that are reviewed as well, but ultimately our child who is classified as eligible for Special Ed and related services and receiving services in Special Ed in the district is treated the same whether he's being reviewed for purposes of our no child left behind or IDEA purposes. The goal is to make sure that that IEP is being implemented appropriately for the youngster. With respect to accountability which is with the No Child Left Behind Act is largely about the parent of an IDEA youngster should need be concerned about whether or not that child's are being met.
- CP: Right.
- VL: Under that statute. No child left behind in my view will take care of itself through the administration.
- CP: Okay. With respect to the IEP, I understand a lot of times when you get to the third level, the parents have a different view, not all the time, but many times they have a different view of what's best for their child, they actually might get independent consultation services and you know that's where sometimes a bona contention comes in, what recommendations do you make as someone who had dedicated a large percentage of your practice to kind of negotiating your way through those moguls so everybody comes out in the same place rather than end of in an expensive litigation.
- VL: I think that both the school staff and the parents have to listen to each other. The parents have to be willing if we're talking about possible out of district placements to visit the out of district placements being recommended by the

school district. Just visit. Just go take a look. Agree to let your child's records be sent to those places because simply agreeing for the transmittal of records to an out of district placement doesn't mean that you're bound to that placement. Broaden your horizons a little bit. I say to the school staff as well, if the parents, mom or dad or guardian says they're interested in a particular school. Even if it's not a state approved school and in state it's regional, agree to just go look at it and then talk about what it is about each of the placements than can appropriately in your view satisfy the needs of the \_\_\_\_ or may not, why is this place better than that place for this particular child.

CP: I think you answered this question, but I want to ask it specifically. Our viewer says if all school districts have the program, but all schools have the program, or will my child have to go to a specific in the district. Do you understand the question.

VL: Yes, I understand, can the neighborhood school for example, serve my child or do I have to send my child all the way to the other side of town. It depends on the youngster's needs. It depends on, not necessarily where the programs are, we don't say we don't do that here in our school district. We try to service every youngster. But it may be that in particular locations there is a congruence of resources available that may make it absolutely in the child's best interest to go somewhere other than in the neighborhood school.

CP: I'm assuming that one of the ways to better serve our children and our districts is where the for instance like the lawyers and the school administrators can get together in a forum where they can basically just talk through issues. Do things like that exist?

VL: In the school districts?

CP: Or on general. Do we provide those kinds of

VL: Yes, yes we do. As a matter of fact, every year for the last eight or nine years for our client's school boards, we have offered a special education symposium in the fall and what we talk about there are IEPs and we will review what's the year been like in the area of special education cases and the number of people attending has really grown over the years. Last year we had 90 some odd people attending. We actually had to take the symposium from the firm to a local hotel because the numbers have grown so significantly and we have child study team members, administrators, principals, vice principals, assistant superintendent, directors of special services attending the symposium and we found that it really provides a very useful service to our client.

CP: And do you provide from time to time for instance updates concerning special education to your clients where you either send it to them or email them, because I know now I look at the law journal and there's are many special education decisions as there are decision related to administrative law and negligence.

