

# PERSPECTIVES *on disability law*



Hinkle, Fingles & Prior  
Attorneys at Law



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## Honors and Recognitions



As we celebrate forty years of advocacy on behalf of individuals with disabilities and their families, Herbert D. Hinkle is being recognized by the New Jersey Council

on Developmental Disabilities with their highest honor, the Lifetime Achievement Advocacy Award. Herb is being recognized for a lifetime of dedication and advocacy including a number of precedent setting and individual cases protecting the rights of individuals with disabilities. Here is a sample of what leaders in New Jersey's disability community have to say:

*"His core beliefs in the rights of individuals with developmental disabilities are evident in the passion he has demonstrated throughout his career."*

- Suzanne Buchanan, Psy.D., BCBA-D,  
Executive Director, Autism New Jersey

*"He has fought tirelessly for the rights of individuals to access services, to receive equal treatment under the law, and to live in communities of their choosing."*

- Thomas Baffuto, Executive Director,  
The Arc of New Jersey

*"He is considered one of the foremost experts in disability law, and he has used his skills and leadership to affect the lives of countless individuals."*

- Ellen Nalven, M.Ed.,  
Executive Director, PLAN NJ

## Understanding "Stay Put" in Special Education

By: Ira M. Fingles, Esq., and S. Paul Prior, Esq., Hinkle, Fingles & Prior, P.C., Attorneys at Law

Each year, school districts review and prepare individual education programs (IEPs) for the next school year. Regardless of where a child is currently placed, there is always the possibility that the district will attempt to change the child's placement. When this happens, it is often in favor of an in-district program.

Placement decisions are made by the IEP team, which includes the student's parents. A district cannot unilaterally move a student out of his or her current placement against the parents' wishes. Placement decisions must be made on an individualized basis and cannot be made to conform to prescribed numbers or percentages of students in certain types of programs, nor can they be based on the cost of a particular placement or program. In fact, to do so is a violation of the Individuals with Disabilities Education Act (IDEA).

Increasingly, districts are establishing new in-district programs in order to serve students with particular needs, for example, those with autism. It is a red-flag if a district proposes to bring all students with autism back from an out-of-district program to a new in-district program. Such an attempt is a clear demonstration that placement decisions are not being made on an individualized basis.

Districts may also propose changing the intensity or duration of related services and therapies, for example, from 1:1 session to group sessions or consultative services; or from 30 minutes to 20 minutes.

Under the law, parents have a right to challenge any proposed change in placement, program,

or level of service. If a parent disagrees with a district's attempt to change the placement or otherwise alter services in the IEP, the parents should immediately file for mediation or a due process hearing. By doing so, parents trigger the stay put or pendency provision of the IDEA. This provision essentially freezes the last agreed upon IEP while the parents and the district are contesting the issue of the student's placement or services. The student remains in his current placement and continues to receive services under the last agreed upon IEP until the dispute is resolved.

Before a change in a student's placement can occur, parents must be provided with written notice ten days prior in Pennsylvania and fifteen days prior in New Jersey. Be prepared – such written notice will often take the form of a revised IEP, but any written notice will suffice. If parents do nothing within the timeframes mentioned above, the school district's proposed changes will take effect. Refusing to sign the IEP is not enough. Stay put is triggered only if the parent files a request for mediation or a due process hearing in the specified timeframes, then the student must remain in his current placement and services must remain at the same level.

It is essential that parents act quickly if their school district provides written notice changing the student's placement, program, or services. Otherwise, unless a very limited exception can be used, the student's placement will change regardless of whether the parents agree with the decision or refuse to sign the IEP.



Hinkle, Fingles & Prior, Attorneys at Law

# Five Tips to Get You Ready for Your Child's IEP Meeting

By S. Paul Prior, Esq., and Evelina E.G. Padilla, Esq., Hinkle, Fingles & Prior, P.C., Attorneys at Law

1. **Review your child's current IEP and progress reports**, paying close attention to the goals and objectives section. You should also be provided a copy of the proposed IEP ten (10) days before your meeting. Be sure to read it carefully and compare it to the current IEP.
2. **Consider whether anything has changed** and whether your child needs new assessments or evaluations.
3. **Make a list of items you want to discuss at the meeting.** You might ask:
  - Have the goals in the current IEP been met?
  - Are related services – speech therapy, occupational therapy, physical therapy, social skills groups, behavioral supports, and vocational training – described in measurable terms in the IEP?
  - Are there certain classes your child would like to take, or needs to take if he or she plans to attend college?
  - How are life skills, self-direction, and prevocational skills addressed in the IEP?
4. **Consider whether you want to bring a friend to take notes and offer moral support.** You also have the right to tape record the meeting. It is a good idea, though not required, to tell the child study team ahead of time if you plan to do either.
5. **Be prepared to discuss IEP changes**, and, if necessary, take action. For example, if your district proposes a new placement, a change in related services, or an early graduation date and you do not agree, DO NOT sign the IEP. If this occurs you must IMMEDIATELY prepare to file a due process petition in order to preserve your “stay put” rights, which requires filing of the due process petition within 15 days in New Jersey and 10 days in Pennsylvania.  
*(See the article on stay put in this newsletter).*

## Legal Victories

- The firm successfully challenged a Medicaid ruling that refused to allow a family to pay for funeral expenses out of remaining funds in a trust. As a result of the firm's work, the court allowed the family to use trust funds to pay for the funeral and forced Medicaid to provide a written release. The Court also awarded attorney fees.
- The firm successfully obtained a multi-sensory reading program for a nine-year-old student with a visual processing disorder. The specialized services will be provided to him in his home school.
- The firm successfully obtained compensatory special education services for an older student with autism. As a result of the firm's intervention, the student will now receive special education and related services beyond his scheduled graduation from school at age 21.

## At the Podium

- Attorneys from the firm presented a two-part program for The Family Support Center of New Jersey, offering free private consultations for attendees.
- Attorneys from the firm teamed up with CHOP, Children's Hospital of Philadelphia, to present a two-part program for parents of children with Down syndrome.
- Working with clinicians at NYU Child Study Center, attorneys at the firm presented a two-part program for parents of children and young adults with autism.



# Graduation and Students with Disabilities: *What Parents Need to Know*



By: *Ira M. Fingles, Esq., and Maria Fischer, Esq., Hinkle, Fingles & Prior, Attorneys at Law*

Increasingly, school districts are trying to graduate students with disabilities as early as possible. It is more important than ever for parents to know their legal rights regarding when their child with disabilities should graduate.

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## **Q: When does eligibility for special education services come to an end?**

**A:** A student with a disability receiving special education and related services is entitled to do so until the end of the school year in which he or she turns 21. For most teens and young adults with disabilities, special education is the primary source of funding for services until age 21.

The type and level of services the student will receive, and the question of whether the student should graduate before turning 21 depends on the student's individualized needs.

## **Q: What can parents do to ensure their child with a disability does not graduate before he or she should?**

**A:** Parents who think their child will not be able to meet standard legal graduation requirements (e.g., earning sufficient academic credits, fulfilling attendance requirements, and passing certain standardized tests) until after the child turns 18 (or ever), need to begin preparing well in advance to ensure their child will remain in school until age 21. Parents should ensure their child's IEP contains goals and objectives for all of the student's needs. For example, goals and objectives should include behavioral needs, as well as transition skills such as gaining proficiency and independence in activities of daily living, self-care and personal hygiene, social skills, mobility, and vocational skills or college preparatory skills. By ensuring that the IEP is broad, and contains measurable goals and objectives in these areas, students cannot be forced to accept a diploma because there will still be unmet goals and objectives in the IEP.

When applicable, parents should also document (through letters to the district) that the child is not "generalizing" skills learned in school to other settings, such as home and the community. For instance, a student with a disability may be earning high grades in math at school, but may not be able to make simple purchases, ensure he or she receives

the correct change or use a bank. These are all reasons parents can argue that the student is not prepared for life and, therefore, the student's educational entitlement must continue.

## **Q: What should a parent do if the school district recommends graduation, but the parent disagrees?**

**A:** Under the law, graduation is considered a change in placement. If a parent disagrees with the district's attempt to graduate the student for any reason, the parent must immediately file for mediation or a due process hearing. If the parent files right away, they trigger the "stay put" provision under federal law, ensuring that the student's current program remains in place through the course of the dispute (see article on stay put on cover).

## **Q: What are the rules regarding diplomas and graduation ceremonies?**

**A:** The law permits a student with a disability who is not prepared to graduate at age 18 to participate in senior class activities (e.g., senior prom, senior class trips) and even graduation ceremonies without accepting an actual diploma. The student with a disability will receive his or her diploma after satisfying all the goals and objectives and graduation requirements outlined in the child's IEP, or by June 30th in the school year in which he or she turns 21, whichever comes first.

If a student is attending an out-of-district school, parents can choose to have the diploma issued from either the home school district or the out-of-district placement. If the out-of-district placement refuses to issue the diploma, the sending school district must issue it.

When a student with a disability accepts the actual state-endorsed high school diploma, all entitlements to special education and related services come to an end, and the district is no longer responsible for providing anything to that student.



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## Welcoming New Attorney, Adam P. Wilson

**Adam P. Wilson, Esq.**, is well versed in all areas of disability law. He served as the Student Director of the Rutgers University School of Law *Street Law Pro Bono Program*, providing free legal rights education to youth in Camden, New Jersey. In addition he worked as a Student Attorney in the Rutgers-Immigrant Justice Clinic, and was a Managing Editor on the Rutgers Journal of Law and Public Policy. Adam also served as a judicial intern with the Philadelphia Court of Common Pleas. Adam obtained two degrees from Pennsylvania State University, graduating with High Honors. He also graduated Cum Laude from Rutgers School of Law-Camden. Adam frequently lectures on a variety of disability-related legal topics. Adam is admitted to practice in New Jersey and Pennsylvania, and he is a member of the Elder and Disability Law Section of the New Jersey Bar Association.

