

Private Placement at Public Expense by Chris Vance, P.C. and distributed by Carol Sadler

When a child has an Individualized Educational Program (IEP) under the Individuals with Disabilities Education Act (IDEA) and previously received special education and related services under the IDEA, a parent can obtain reimbursement for private placement if it is decided that the school system did not provide a free appropriate public education (FAPE) to the child in a timely manner prior to enrollment in the private school. To preserve one's right to obtain reimbursement, parents MUST :

1. Prior to removal, tell the school system in the MOST RECENT IEP meeting that they are rejecting the placement proposed by the school system, including stating their concerns (failure to provide FAPE, i.e. child isn't reading at grade level and not making meaningful progress, child is being left behind, child's significant language disabilities are being ineffectively addressed, etc.). At this time, the parents must state that the school system proposed placement and IEP are being rejected and that they will be enrolling their child in a private school at public expense OR 10 business days prior to the removal of the child from the public school:
2. The parents must give written notice that the placement is rejected, including a statement of concerns and notice that the child will be privately placed at public expense.

Reference: IDEA, 20 U.S.C. Section 1412 (a) (10) (C)

A trap to be careful for is that the law states that if prior to the parents' removal of their child from the public school, the school system states its intent to evaluate the child and the parents did not make the child available for the testing, the parents may not obtain reimbursement. However, the law does say that the school system must state what testing is requested and why and that the testing is reasonable. Note - this requirement of testing is prior to placement, not subsequent. Also note that the testing must be reasonable and appropriate, but I usually just let the system test, just not unreasonably. No parent needs an extra argument to fight, and if they test, the parent can always seek independent testing, showing the system's testing to be without merit.

There is another exception to being able to recover, and that's when the parents act unreasonably. Parents should always try to be reasonable. If the system needs information, I recommend providing reliable and valid information. For example, if they say why does your child need to attend LMB (Linda Mood Bell Reading program), tell them why: LMB offers an intense reading program designed to meet my child's individual needs when the system has failed to do so for too many years. If they seek private testing results that are valid, by all means provide them. Always be polite, professional, and reasonable, but this does not equate to a child not being taught to read.

There are also exceptions to having to provide written notice or notice during the most recent IEP meeting, although I always avoid this exception for it only gives room for an extra argument by the school system. In any event, the exceptions are that the parents are illiterate, compliance with the notice requirements would cause physical or serious emotional harm, the school prevented the parent from providing such notice (I suggest never ever trying this argument), or the parents did not receive notice of the notice requirement. Again, notice is just too easy and avoids too many additional issues.

What I recommend is that parents try to resolve issues from the beginning so the child does not fall behind. They should inform the system the child is not receiving FAPE. They can ask for independent testing in reading (this is called an IEE - independent educational evaluation). They may want to ask for an independent educational psychological evaluation, for too often systems claim the child is not reading LD due to supposed deflated IQ scores. In seeking an independent evaluator, they should go to ones who understand why LMB works and who understand why children need intense reading programs. The school may try to insist on a certain evaluator, but the law prohibits this. The system may also try to stall, but the law is clear, the system must, "without undue delay" provide the IEE or else ask for a due process hearing, which is costly and usually avoided. I also suggest parents seek private testing at insurance expense, especially speech and language evaluations. Most good speech language pathologists (SLPs) understand how language and or auditory processing affect reading and comprehension. Children I represent receive full testing so that we know exactly what the issues are and how to remediate the concerns.

In preparing for private placement, parents should track their children's lack of progress, informally and formally, and report it in formal IEP meetings, written correspondence, etc. and request a change from the ineffective reading program being used (too often the SRA program), explain why the resource setting is not working, have professionals explain why intense 1:1 services are needed, etc.. Parents must also be aware that children with significant language impairment may appear to have low IQs but really all that is being tested is the language impairment and its effect on cognitive abilities and not the true cognitive abilities should the language impairment be remediated.

Bottom line, public schools are required by law and receive money, both federal and state, to teach children how to read. Should a child have greater needs than others, this just means the child needs appropriate intervention and services to make meaningful progress. Too often school systems tell me that a child can't read because the child is reading impaired. This is absurd. Disabled reading impaired children can be taught to read when the appropriate educational programming is put in place.

Parents should never seek nor ask for the best education or to maximize their children's learning, for the law does not require such. They must merely ask for an "appropriate education". The law does not require disabled children be provided with a "Cadillac" education (from a court case), but as I tell school systems, teaching a child to read is not a Cadillac, it's a bare minimum, which the law does require. School systems too often blame disabled children or their parents for the children's inability to read, but parents must always remember, it is the

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*"There is nothing more unequal than the equal treatment of unequal people."
- Thomas Jefferson*

school system's job to teach the child to read. In GA, too many children are not being taught to read. The educational deprivation this is causing is significant and alarming.

In closing, it is easier to win a case by giving notice, teaching the child to read, and then seeking reimbursement as opposed to going for the private placement up front. Too often the schools will say the child can never read on grade level, or it is unreasonable for the child to gain 1, 2, or maybe 3 years in reading in one year. Yet, I've seen LMB accomplish this in 6-12 weeks over and over again. This kind of documentation, that is, getting the school system to deny the child can accomplish something in a year that the child accomplishes in a matter of weeks, helps prove a case. LMB is also good at accomplishing more in weeks than public systems have accomplished in past multiple years. This is valid ground for seeking reimbursement. Parents should also seek reimbursement for transportation, which is a related service under the IDEA.

Again, this is not legal advice but merely my thoughts on how to insure our children receive an appropriate education free from discrimination based upon disability. I hope it helps. You know how I feel about our children being taught to read. Please feel free to share this with your clients, but they MUST understand that this is NOT legal advice. Each case is fact dependent, and I can only give legal advice once I have all relevant facts.

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