

THE ADVOCATE

Frishman & Faber

**Attorneys and
Advocates for the
Special Family**

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Welcome to The Advocate! Who are we?

Frishman & Faber specializes in providing quality advocacy for the unique needs of children with special needs from birth through adulthood. At Frishman & Faber it is our mission to provide expert counseling and advocacy in a field where families are underserved. Our combined skills and experience enable us to serve as a resource for families of children and adults with special needs in a variety of settings. We work with families to ensure that children with disabilities receive an individualized, free and appropriate public education through consultation with families, communication with school districts, attendance at committee meetings, negotiation and litigation. We counsel and represent families in all types of guardianship proceedings in Surrogate's and Supreme Court. We assist families in obtaining and preserving public benefits and resources, and accessing community programs. We provide estate planning for disabled

individuals and their families using traditional estate planning tools and specialized trusts. We conduct trainings, seminars and group presentations on related topics for school districts, advocacy groups, professional organizations and other groups.

Jill F. Faber, Esq.

Prior to beginning her practice in special education advocacy, Jill was a litigation associate in a large firm and a staff attorney for a legal aid agency, where she advocated on behalf of the agency's clients for access to public benefits. In addition, Jill has a Masters degree in education and has classroom teaching experience with elementary and middle school students with special needs. Jill is an active member of many local organizations that advocate on behalf of individuals with developmental disabilities and frequently lectures on topics in special education law. Jill is the mother of three children, one of whom is

developmentally disabled.

Sheryl R. Frishman, Esq.

Previously, Sheryl was the senior associate attorney at a prominent New York elder law and trusts and estates firm where she managed the elder law department. She has served numerous times as a court evaluator, guardian, guardian ad litem, and court appointed counsel for incapacitated persons in New York State Supreme Court and Surrogate's Court. Sheryl is a board member of Westchester Arc and the JCC on the Hudson. She is member of the Family Services Council for the Hudson Valley Developmental Disabilities Services Office and is an active member of many organizations concerned with Autism and other disabilities. Sheryl has been instrumental in creating local programs for children with special needs in underserved areas of need. Sheryl has three children, one of whom has Autism.

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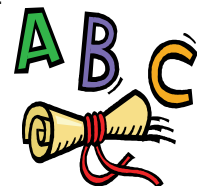
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Key Special Education provisions that you must be familiar with to effectively advocate for your child!

- IDEA
- NY Education Law
- FAPE
- LRE
- CPSE/CSE
- IEP
- Impartial Due Process Hearing



Free Appropriate Public Education ("FAPE")

Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. 794, states that "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."

Section 504 demands that every school district provide a "free appropriate public education (FAPE)" to all qualified persons within the district's jurisdiction who have a disability.

Who counts as a qualified individual with a disability?

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You must plan for the future!

“Learn as though you were going to live forever, live as though you were going to die tomorrow.”
Mahatma Gandhi

One of the scariest things for any parent of a child with special needs is what will happen to my child if I am no longer here. Although we try to put these scary thoughts out of our mind, without proper planning we could be leaving a disaster for our children and the people who are left to care for them. So what can be done?

* A Will: A person who has a special needs child needs a Will. Even if you have a small estate, a Will allows you to nominate a guardian for your child. This is a very important nomination, as the guardianship of your special needs child may survive their age of majority. (Guardianship will be discussed in a later issue). Without a Will your estate would be governed by the laws of intestacy, which may not be your intent.

* A Trust: A direct bequest to a disabled child may knock your child off important public benefits (public benefits will be more fully discussed in a later issue). A bequest to a sibling to take care of the disabled sibling is a risky venture. Also, disinheriting your disabled child is difficult and usually not what a parent would want. Thus, you may want to consider a Supplemental Need Trust, which would allow your child to remain on public benefits, yet receive the “extras” a parent would want their child to have (the Supplemental Needs Trust will be more fully discussed in a later issue).



Did you know that the most important estate planning document for a family with special needs is not prepared by a lawyer? It is a “Letter of Intent” and a sample can be found on www.frishmanfaber.com

Julie P. Passman, is an attorney with the law offices of Frishman & Faber. She began her law career practicing in the Litigation Department at Weil, Gotshal and Manges, and she is currently practicing special education advocacy. Julie is the author of “Retroactive Reimbursement: The Standard of Review for a Parent’s Unilateral Placement Under the Education For All Handicapped Children Act,” which was published in the Cardozo Law Review. Julie received her B.A. from the University of Pennsylvania and her J.D. from Cardozo School of Law. The mother of three school-age children, Julie has worked closely with administrators, teachers and parents in the school district to develop programs that promote positive student outcomes.

Estate Planning Tips for the Special Family.

- Do a Letter of Intent;
- Do a Will;
- Consider a Supplemental Needs Trust;
- Choose Trustees and Guardians wisely;
- Consider all public benefits your child or family is or may be eligible for now or in the future;
- Know when your health insurance will no longer cover your child;
- Check all beneficiaries on all non-probate assets, i.e., life insurance policies, IRA’s or other retirement accounts, annuities, joint accounts etc;
- Know if there are there any monies in the special needs child’s name. For example: college savings accounts, educational IRAs, custodial accounts, etc;
- Do advanced directives, i.e., Power of Attorney, Health Care Proxy, etc;
- Go to an attorney who specializes in planning for the Special Family, this is a very specialized area of the law.



Ask The Attorney By Julie P. Passman, Esq.

What is meant by the requirement that special needs students be placed in the Least restrictive environment (“LRE”)? First, LRE means that to the maximum extent appropriate the school district must teach every special needs student in regular classrooms with non-special needs students, unless the IEP states otherwise. Essentially, every special needs student should be placed in a regular classroom until a more restrictive environment is needed. Second, LRE means that to the maximum extent appropriate the school district must educate the special needs child in the same school

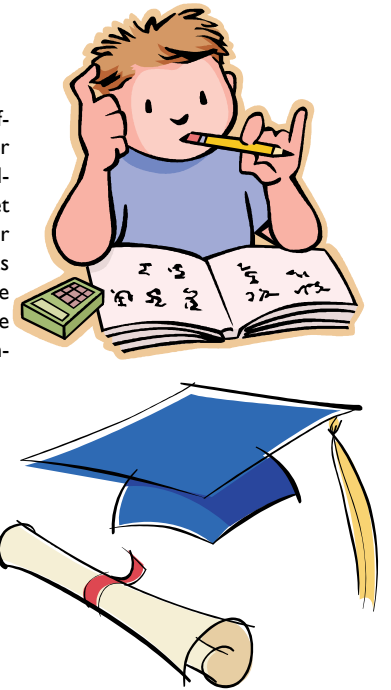
Third, LRE means that the school district must provide every special needs student with suitable assistance and support services known as supplementary aids and services as required by the student’s IEP. Additionally, New York specifically requires that LRE placement be determined following consideration of the proximity of the placement to the pupil’s place of residence.

Have a question you want answered in this column? Please contact us. We regret that we can only answer one question per issue.

Ready, Set, Now Go — It's Transition Time!

The purpose of transition is to ensure that children with disabilities or special needs have available a free and appropriate public education, designed to meet their unique need and prepare them for further education, employment and independent living. Starting at the age of 16 your child's IEP must include transition services. This means that the school district must start planning movement from school to post-school activities. These transition services must be based on the student's individual needs and preferences for the future. The student should be involved in the process and it should be "person centered" which means it should be tailored to the unique needs and desires of your child. Parents should start thinking about transition services at age 12. It should start to be discussed at the annual meeting by age 14. At the IEP meeting where transition services will be discussed the student should be at the meeting and meaningfully

participate in the meeting (if possible) so their preferences are considered in the plan. It is alright for a child to have unrealistic goals—even typical children do. It is important for parents to start to "let go" a little and allow their child to express their wishes for their future and allow them to become as independent as possible. Additionally, an outside agency, may for the first time be made part of the meeting where transition is discussed. These agencies may include in Westchester County for example, Westchester Arc, YAI, & WJCS. Thus, it is important even at an early age for parents to be aware of what agencies are out there and what services they could provide for their child. The IEP must specifically state what transition services a student will be getting and for what purpose. Remember, if a child is not going on to higher education, the school district may be responsible to provide services through age 21.



From Our Advocate.....

What are the components of a good IEP?

- *Every IEP must be individualized to reflect the unique goals and needs of the particular student.
- *Every IEP must include the availability of services.
- *Every IEP must include all services needed by your child.
- *Every IEP must include the legal requirements stated below.

What components are required in an IEP?

- *The child's present level of educational performance;
- *The annual goals for the child, including short-term

instructional objectives;

- *The specific education services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
- *The transition services need for a child as he or she begins to leave school setting;
- *The projected initiation date and duration for proposed services; and
- *Objective criteria, evaluation procedures and schedules for determining, at least an annually, whether instructional objectives are being achieved.

Leslie Jeris is an Advocate in the law firm of Frishman & Faber. She has been trained to be a special education advocate by COPAA "Council of Parent and Attorney Advocates". She is an expert in assisting with the preparation and negotiation of great IEPs for our clients! Leslie has two children one of whom is on the autistic spectrum.

FAPE (continued from page 1)

Section 504 defines a qualified individual with a disability as one who has a physical or mental impairment which substantially limits on or more major life activity AND has a record of such impairment OR is regarded as having such impairment.

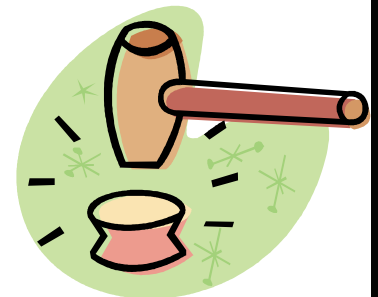
For elementary and secondary education programs, a qualified person with a disability is a person who is: of an age during which it is mandatory under state law to provide such services to persons with disabilities; OR of an age during which persons without disabilities are provided such services; OR a person for whom a state is required to provide a free appropriate public education under the IDEA.

To speak broadly, all school age children who have disabilities are entitled to FAPE.

What is a Free Appropriate Public Education?

Those who operate federally funded programs must provide the required services at no cost to students with disabilities. Only costs that are equally imposed on their non-disabled students may be imposed on disabled students. The services that make

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*From assistance in obtaining
appropriate special education services
to planning for the financial future of
your special needs child, Frishman &
Faber is committed to assisting
families in all legal aspects of having a
child with special needs!*

FAPE (continued from page 3)

up the cost of a program may include: tuition, therapeutic services, psychological services, medical services, room and board, and transportation. If the school district is unable to provide the requisite program or services, they must place the disabled student in, or refer them to, a comparable appropriate program. However, they must guarantee that sufficient roundtrip transportation is provided at no additional cost. Likewise, if a disabled student requires residential care, it is the school district's duty to pay for the cost of residential placement. In situations where there is no comparable program and the student is placed in a private school, it is the school district's duty to pay. However, if the school district has made FAPE available and the parents decide to place the disabled student in private school, the school district is not obligated to pay for the private education.

What might be considered an appropriate education for one child might not be considered an appropriate education for another. An appropriate education may involve the implementation of several different teaching methods in a variety of settings, various supplementary services, and may include related services such as speech therapy, occupational therapy, physical therapy, medical services and psychological counseling.



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