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## NEW GUIDANCE FROM PDE REGARDING FAPE AND ONE-TO-ONE SUPPORT OPTIONS

In August 2015, the Pennsylvania Department of Education (PDE) issued a new Basic Education Curricular (BEC) entitled “Special Education FAPE and One-to-One Support Obligations for Students with Disabilities.” This BEC replaces “Behavioral Support Obligations” and can be found at <http://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/Federal%20Code/Special%20Education%20FAPE%20and%20One-to-One%20Support%20Obligations%20for%20Students%20with%20Disabilities.pdf>. The BEC clarifies that a Local Educational Agency (LEA) is ultimately responsible for the delivery of FAPE which includes one-to-one and/or paraprofessional supports.

As we have long advised, if a student needs one-on-one support for a free appropriate public education (FAPE), then a school district must ensure that the support is provided daily – even if a Therapeutic Support Staff (TSS) has been authorized through a mental health agency. A school district cannot rely on a parent to obtain school based wraparound supports for a student. PDE states, “Whenever an IEP team or Section 504 team determines that a student with a disability requires one-to-one support services for all or part of the school day, the LEA is responsible for the provision of this service without delay, even if that means using LEA resources (including additional staff) to provide one-to-one support services.”

PDE reminds school districts that an individualized education program (IEP) team must make determinations at every IEP meeting of whether a student with a disability requires one-to-one support services to make meaningful progress toward annual goals in the IEP in the least restrictive environment even if the student currently receives one-to-one services from another agency or individual. Section 504 teams are also reminded to make the determination at the development of the Section 504 service agreement and at every meeting to determine whether the Section 504 qualified student requires one-to-one support services.

In determining whether a student needs one-to-one supports, PDE has provided a list of factors to be considered by a Student’s IEP or Section 504 team:

- Reports from the student’s parents, teachers, and other persons with information relevant to the student’s academic, social, emotional, and/or behavioral needs;
- The student’s past history in making meaningful progress in his or her educational program including the student’s progress toward annual goals without one-to-one support;
- The student’s record of attendance, any disciplinary offenses, including offenses resulting in manifestation determinations or multiple short term suspensions, functional behavioral assessments, positive behavior support plans and any other evaluations available to the team, including evaluations from a student’s community or school based mental health provider; and
- The student’s behaviors that resulted in exclusion from the classroom.

If the IEP team determines that a student requires one-on-one support for FAPE and the school district allows the TSS to work with the student in the school, the school district must ensure that if the TSS is absent or resigns from his/her position there is a qualified staff member to substitute during the TSS’ absence. This can become a scheduling headache

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and worse, PDE states that a school district could ultimately be responsible for payment to the TSS if the funding falls through. Because of these worst-case scenarios, some school districts have opted to either hire or assign an appropriately trained staff member full time to the student rather than try to coordinate the TSS services. It is never appropriate to deny a student access to any school activities due to the unavailability of staff or funds to provide one-to-one services if the IEP or 504 team has determined that those type of services are needed for FAPE.

If a school district is going to substitute TSS services for its own one-to-one support services, we recommend contacting your school solicitor to discuss the appropriate wording that should be added to a student's IEP or Section 504 Service Agreement to ensure that a school district is offering and delivering FAPE.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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