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Attorney: Disabilities law confusing, contradictory

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Parents of special-needs children often disagree with educators over what services their children should receive at taxpayers' expense.

The newest version of the Individuals with Disabilities Education Act isn't likely to put an end to disputes between parents fighting for services and educators trying to prevent special-education costs from blowing holes in their budgets.

"The law asks the schools to do things that are way beyond what many public schools are capable of doing," said Matthew Cohen, a leading expert in special-education law during a workshop Saturday in Evanston. "On top of that, the law has language that is so confusing and sometimes contradictory that both parties at the table can have totally different interpretations of the same words and be right."

The workshop, sponsored by the Family Resource Center on Disabilities and the State Board of Education, was intended to brief parents and educators on changes in the new law.

Though the federal law governing special education was amended in 2004, the federal regulations that explain its requirements were released only last August.

Adding to the ambiguity in Illinois is that the state has yet to rewrite the Illinois School Code or adopt new state regulations that conform to the federal law.

Earlier interventions

The new Individuals with Disabilities Education Act puts more emphasis on providing youngsters early interventions within the regular classroom before they are identified for special-education services.

In Illinois, special-education students represent 15 percent of children and adolescents between 6 and 21, compared to 12 percent nationwide.

To qualify for special education, a student must fall into one of 13 categories, such as speech and language impairment or emotional disturbance. One-half of all special-education students -- 49 percent in Illinois -- are classified as learning disabled.

The 2004 law tweaks the criteria for determining whether a student is learning disabled and encourages school systems to first try research-proven methods in the regular classroom before identifying the child for special education.

"Since 50 percent of kids have the LD label, Congress was concerned that many kids were being put into the learning-disabled category not because of a disability, but because of the inadequacy of the regular program," Cohen said. Also of concern was the disproportionate number of minority youngsters identified for special education.

Previously, children were categorized as learning disabled if there was a discrepancy in their performance -- say, low performance in reading in relation to their intellectual ability.

"The 'discrepancy' formula only tells us that the kid isn't achieving; it doesn't tell us why he or she is not achieving," Cohen said.

School personnel can deem a child to be learning disabled if he doesn't make progress in one or more key areas. The areas are oral expression; listening comprehension; written expression; basic reading skills and

comprehension; and mathematical reasoning.

"The child still needs to have a neurological processing disorder, a disorder of the brain that affects the ability to receive, retain, organize and express information," Cohen said.

Identifying patterns

The school system also can consider a pattern of strengths and weaknesses similar to the discrepancy standard under the old law.

To address the overuse of the learning disability label, the federal government has developed a program called Response to Intervention.

Before identifying a child as learning disabled, the school system can provide the child with an intensive instructional program based on certain research-proven methods in the regular classroom.

"If the child responds well to these scientific, research-based methods, that suggests the instruction wasn't adequate rather than the child had a learning disability," said the attorney.

The new law has opened a floodgate of new concerns. Many schools don't have enough staff trained in the interventions, Cohen noted. Moreover, schools have not received any guidance on how long the interventions should be used to test the child's response, or what constitutes a good response.

"Right now, schools are really up in the air about what to do about this," Cohen said. "Many kids with learning disabilities are going to be left in this limbo state of intervention," before they are evaluated for special education.

What parents can do

Cohen urged parents to work with educators in advance to pin down the specific time frame and goals if their children are identified for the interventions.

He suggested parents ask, "What are we going to work on, how long are we going to try it and what criteria are we looking for in terms of progress?"

The state already has implemented some changes based on the new Individuals with Disabilities Education Act. Previously, school systems were responsible for identifying special-education students who lived within their boundaries but attended private or parochial schools within or outside the district.

Under new federal and state regulations, that responsibility shifts to the public school district in which the child's private or parochial school is located.

The Illinois legislature has sent Gov. Rod Blagojevich a bill that extends the age of eligibility for students who need special-education services to integrate into society. Currently, services end at the conclusion of the school year in which the student turns 21. The new law would terminate services the day before the student's 22d birthday.