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## 2010 Special Needs Law Update

The past year was a relatively quiet one for special education law, but we celebrated the 35th anniversary of the Individuals with Disabilities in Education Act (IDEA) and the 20th Anniversary of the Americans with Disabilities Act (ADA), the two most important federal laws protecting the rights of students with special needs.

### National News

**Bullying.** It was impossible in 2010 to turn on the television or radio, pick up a newspaper or magazine or to go online without seeing tragic stories about bullying and the terrible consequences when bullying goes unchecked. Children with special needs are especially vulnerable. Parents are fighting back and getting help from the United States Department of Education (DOE).

In October 2010, the DOE's Office of Civil Rights (OCR) sent a letter to educators reminding them that having an anti-bullying policy is not always enough to prevent discriminatory harassment. **Federal law protects kids against harassment based on disability** in addition to race, color, national origin or gender. Schools cannot provide less protection than is required by these federal laws.

Schools must protect children from harassment by peers, school employees and third parties, such as visitors to the school. Parents who want more information can call OCR at 800-421-3481 or visit:

<http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>

**KASSA.** In March 2010, the U.S. House of Representatives passed the **Keeping All Children Safe in School Act (KASSA)**. If this bill becomes law, it will become the first federal law to regulate the use of restraint and seclusion in schools. KASSA passed in response to a recent government investigation that found students being subjected to inappropriate and abusive uses of restraint and seclusion.

Under the Act, physical restraint and seclusion could be used in school only when a student's behavior poses an imminent danger of physical injury to the student, school personnel, or others and cannot be included in an IEP.

You can track this bill at [www.govtrack.us/congress/bill.xpd?bill=h111-4247](http://www.govtrack.us/congress/bill.xpd?bill=h111-4247)

## **Deleware Comprehensive Assessment System (DCAS)**

The First State has introduced new comprehensive statewide testing for students in grades 3-10 with specific provisions for children with IEPs and 504 Plans. Since most students will take the Comprehensive Assessment System (DCAS) tests on a computer, accommodations associated with written tests are being discontinued.

Under the DCAS guidelines, students who qualify can use new technology to help them in taking the test. For example, a text-to-speech feature will allow the computerized test to read itself aloud to the student, a new feature for many students in 2010-2011.

Students will be able to choose a background color other than white and students with visual impairment can also use an online zoom feature to enlarge the test question, graphics or reading passage.

For more information, go to: <http://de.portal.airast.org>

## **New Jersey Good Grades Don't Constitute FAPE**

Another Third Circuit case, *D.S. v. Bayonne Board of Education*, established that getting good grades does not necessarily mean a special education student is getting a Free and Appropriate Public Education (FAPE) as required under IDEA.

The ruling in April 2010 reversed a lower court decision that the Bayonne Board of Education was not obligated to pay the private school tuition of a student who had very good grades in his special education classes, but performed poorly on the standardized tests used to evaluate his true academic achievements.

The Third Circuit held that "it is clear that a court should not place conclusive significance on special education classroom scores, a conclusion that we believe is reinforced by the circumstance that, as here, there may be a disconnect between a school's assessment of a student in a special education setting and his achievements in that setting and the student's achievements in standardized testing."

You can read the full opinion at: [www.ca3.uscourts.gov/opinarch/084730p.pdf](http://www.ca3.uscourts.gov/opinarch/084730p.pdf)

## **Pennsylvania IEP for a 24-Year-Old**

July 2010 brought a legal breakthrough for special education students who are older than 21. The U.S. Court of Appeals for the Third Circuit held that the School District of Philadelphia was obligated to provide an IEP to a 24-year-old woman who suffers from autism and pervasive developmental disorder, among other disabilities.

The School District had claimed that, under IDEA, it was no longer bound by a settlement agreement to provide an IEP once the young woman turned 21.

In *Ferren C. v. School District of Philadelphia*, the Third Circuit held that in this case an IEP was essential because the private school the young woman attended required an IEP and she had been doing well at the school for several years.

According to the court, "The School District has already funded a trust fund to provide [her] with compensatory education." The purpose of this monetary award — to make up for past failures on the part of the School District — would be frustrated" if the District stopped providing IEPs.

You can read the opinion at [www.ca3.uscourts.gov/opinarch/091587p.pdf](http://www.ca3.uscourts.gov/opinarch/091587p.pdf)

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