

## Special Ed & Middle School: Tips for Parents

The middle school years can be challenging for any child and any family. Students are expected to be more independent, adjust to different teachers for each different subject area and, of course, navigate the maze of social cliques. However, these years can present even more challenges for children with disabilities and their families. We often hear from our clients about the difficulties of moving from the more supportive and nurturing world of elementary school to the more academically competitive and socially challenging world of middle school.

As children with disabilities approach these middle school and early teenage years, an unfortunate reality is that disputes between parents and school districts about special education programming and placement are very common. These disputes usually take shape in one of three ways. One scenario involves parents wanting their child to remain either fully or partially included in classes with peers without disabilities, while the school district wants the child placed in a substantially separate classroom in the local school or in an out-of-district placement. The second situation essentially just flips the positions of the parties; the parents feel an out-of-district placement is necessary for their child, but the school refuses. The third scenario involves parents encountering resistance when seeking a residential placement for their child.

Regardless of the situation in which a family finds itself, in order to increase their chances of success, parents should have an understanding of the basic laws and principles that apply to special education services. The Individuals with Disabilities Education Act (IDEA) is the federal law that protects the educational rights of children with disabilities. Under IDEA and Massachusetts law, every child receiving special education services is entitled to receive a “free and appropriate education” (FAPE) and to be educated in the “least restrictive environment” (LRE). The law does not require the school to provide the best possible program for the student, nor does it require the school to provide services that will maximize the student’s educational potential. Instead, the school must provide “meaningful access” to public education that allows a student to make meaningful and effective progress commensurate with his or her educational potential.

The principle of LRE is that, to the maximum extent appropriate, a child with a disability must be educated with other students who do not have a disability. LRE is a continuum, and the more separated the child with a disability is from students without disabilities, the more restrictive the setting is considered. In most situations, a residential

placement is considered one of the most restrictive options. When either a school district or parents seek a more restrictive placement, the party must show that the student cannot make effective progress and receive FAPE in a less restrictive setting.

The standard for determining the need for a residential placement, as reflected in First Circuit case law and King Philip, BSEA #12-0783, 18 MSER 20 (2012), is whether the educational benefits to which a child is entitled can be provided only “through around-the-clock special education and related services, thus necessitating a placement in an educational residential facility.” Furthermore, particularly in situations in which a child has behavioral or emotional issues that are difficult to manage at home, parents should be prepared to show that their child cannot receive FAPE in a day program even if home-based services and supports or other “wraparound” services are provided. Practically speaking, this often means that parents have to try in-home services for a reasonable period of time before seeking a residential placement.

With this legal framework as a backdrop, if parents are not in agreement with the school about programming and placement, it is important to remember that parents have valuable input as members of the IEP team, but it is crucial to have professional support for their position. We cannot emphasize this point enough. Parents need to be prepared to prove their case at a team meeting, at mediation or at a hearing at the Bureau of Special Education Appeals (BSEA), if it gets that far. Parents have the right to obtain an independent evaluation if they are not satisfied with the school’s evaluations and, in some circumstances, to have the school district pay for that independent evaluation. However, parents are almost always best served by retaining their own independent expert. A well-credentialed independent expert usually is essential to prevail in a dispute with the school over programming and placement. Parents always can have their child evaluated by whomever they wish at their own expense. Health insurance may cover the cost of some evaluations.

When choosing an evaluator to serve as an expert if the dispute is not resolved, parents should make sure the evaluator has experience with their child’s particular disability and age group. In addition, we always recommend that parents have their expert observe any current or proposed program or placement. The school must allow the parents’ expert to have a reasonable opportunity for such observations. Finally, parents should ensure that the evaluator is willing to testify at the BSEA, if needed.

A final thought for parents as they wade through the difficulties of middle school – begin thinking about the future. By this, we mean begin thinking about transition planning and the transition services that may be appropriate for the child. Massachusetts law requires transition planning to begin at age 14. Transition services must be coordinated, results-oriented, and focused on improving academic and functional achievement to facilitate the move from school to post-school activities. All IEPs from age 14 on, in accordance with IDEA, must include a post-school vision and incorporate “appropriate measurable postsecondary goals based upon ageappropriate transition assessments” related to training, education, employment and, if appropriate, independent living skills.

## RESPONSIVE SOLUTIONS

Two simple words that explain our commitment to you. Being responsive is a critical element in building a strong attorney-client relationship. Whether you are a new or existing client, we’ll be quick to respond to your needs with the knowledge necessary to find solutions to your legal concerns.

## WE HAVE ANSWERS

To learn how we can assist, contact our Special Needs Practice Group Leader Frederick M. Misilo, Jr. at 508.459.8059 or [fmisilo@fletchertilton.com](mailto:fmisilo@fletchertilton.com).

Ask us about providing a seminar for groups of parents, professionals and advocates on special education issues

[www.fletchertilton.com](http://www.fletchertilton.com)



**Frederick M. Misilo, Jr.**

**P:** 508.459.8059

**F:** 508.459.8359

**E:** [fmisilo@fletchertilton.com](mailto:fmisilo@fletchertilton.com)

**Fletcher Tilton** <sup>PC</sup>  
Attorneys at law

### THE GUARANTY BUILDING

370 Main Street, 12th Floor  
Worcester, MA 01608  
TEL 508.459.8000 FAX 508.459.8300

### THE MEADOWS

161 Worcester Road, Suite 501  
Framingham, MA 01701  
TEL 508.532.3500 FAX 508.532.3100

### CAPE COD

1579 Falmouth Road, Suite 3  
Centerville, MA 02632  
TEL 508.815.2500 FAX 508.459.8300

*This material is intended to offer general information to clients and potential clients of the firm, which information is current to the best of our knowledge on the date indicated below. The information is general and should not be treated as specific legal advice applicable to a particular situation. Fletcher Tilton PC assumes no responsibility for any individual's reliance on the information disseminated unless, of course, that reliance is as a result of the firm's specific recommendation made to a client as part of our representation of the client. Please note that changes in the law occur and that information contained herein may need to be reverified from time to time to ensure it is still current. This information was last updated Winter, 2013.*