



# Do I Need a Lawyer?

## When to Hire an Attorney for Your Child with Special Needs or Suspected Needs

By Marion M. Walsh, Esq., Littman Krooks LLP

**B**etsy and Tom had been advocating for their daughter, Sarah, since she began middle school. Although she is very bright, she developed problems with turning in assignments and began failing her classes. She then refused to attend school. Her parents emailed teachers almost every day. While teachers expressed concern, no one referred her for special education services. One teacher told the parents that Sarah needed private therapy. Sarah then began cutting herself and was hospitalized. By the end of ninth grade, she had missed almost the entire year and received incompletes in every class. Betsy and Tom worked with countless therapists and doctors but no one could help with the school issues. Finally, the parents sought the help of a special education attorney. Within six months, the attorney assisted in classifying Sarah for special education services and locating an appropriate placement that the District agreed to partially fund. Today, Sarah is succeeding and attending school regularly in a new placement.

Most parents do not expect to have to retain a law firm to address problems with their children's education. Yet an experienced special education attorney can help parents navigate the complex bureaucracy of public school districts and the network of private providers. More importantly, a good attorney can make a significant difference in your child's well-being and education.

### AN APPROPRIATE EDUCATION FOR EVERY CHILD

The Individuals with Disabilities Education Act (IDEA) creates an affirmative obligation for school districts to identify every student suspected of having a disability that has an educational impact. The law protects students in 13 categories of disability, and guarantees a free appropriate public education (FAPE). Section 504 of the Rehabilitation of 1973 also guarantees students with disabilities equal access, if they have a physical or mental impairment that substantially limits a major life activity.

Many parents, such in the case of Betsy and Tom above, may face battles with school districts over a child's services. Often, school districts underestimate needs and may not notice or address problems until the child fails or cannot attend school. A child's needs are not static and even a gifted child can develop a disability during her school career. Some parents of students who develop complex disabilities may need to fight for classification. A good attorney can assist in classification and ensuring that the student has an appropriate Individualized Education Program (IEP).

School districts and parents necessarily view children's needs through very different lenses, both in identification and services. In providing FAPE, school districts must provide students with disabilities with an appropriate education, but are not obligated

to maximize potential. FAPE means that a child must receive passing grades and advance from grade to grade. Too often, school districts may use this standard as an excuse for minimal services or laggardly supervision and vigilance. A good attorney can help ensure that a school's interventions are scientifically-based and individually targeted toward a child's needs.

Here is a list of some situations in which a good attorney can make a difference. This list is by no means exhaustive:

- Your child has significant difficulties in school which the school is not supporting or understanding. An attorney can help ensure you find the right evaluators to pinpoint a child's specific needs. The school may not understand the severity of your child's needs or develop an appropriate placement
- Your child cannot attend school regularly. School avoidance or anxiety can be an intractable and difficult problem that school districts often do not understand. A good attorney can help you coordinate mental health providers, evaluators, hospitals and alternate placements to help you get your child out of this cycle and attending school again
- You seek public benefits but may not qualify due to resources or income. If your child has a significant developmental disability, it is likely that he or she will be entitled to public benefits – regardless of your

income. An attorney can help you establish a Special Needs Trust or discuss ABLE accounts, and consult with you regarding Medicaid programs including waiver programs and Supplemental Security Income and Disability benefits.

- Your child has mental health needs that the school is not addressing. School districts are responsible for addressing students' social and emotional needs when there is an educational impact. An attorney can help you find more support, special education services and an appropriate placement.

- Your child faces a long term suspension. When your child, whether he or she has special needs or not, faces serious suspension charges, you should consult with an attorney. An experienced attorney can help you work out an acceptable outcome.

- The school has failed your child with a disability and you are placing her in an appropriate private school. Parents may seek tuition reimbursement if a school district denies a FAPE and parents place the children in an appropriate private school. Tuition reimbursement battles can be long and costly; a good attorney can help you and your school district reach a reasonable compromise so both sides do not waste scarce resources.

- Your child with a significant disability is due to turn 18 soon and cannot care for himself. When a child turns 18, whether or not he or she has a disability, she will have the right to make her own decisions. If you believe that he or she will not be able to care for himself as an adult, you should consult with an attorney to commence a guardianship proceeding.

It is recommended that you consult with an attorney as soon as you sense that your child is not receiving appropriate services or your school district fails to cooperate.

*Marion Walsh is an attorney with the law firm, Littman Krooks LLP who focuses her practice on special and general education advocacy. She has been certified as an impartial hearing officer for children with disabilities by the New York State Education Department. Littman Krooks attorneys and advocates handle educational advocacy, special education litigation, transition planning and advocacy, school disciplinary matters, special education due process, private school reimbursement, and Section 504 accommodation advocacy. 684-2100. littmankrooks.com.*

## What to Ask an Attorney?



### Basic Tips

1. What experience do you have dealing with similar situations?
2. Is my outcome realistic? Can you provide a cost range?
3. Will you specifically be working directly on the case and handling the day to day work?
4. Can you refer me to other experts, evaluators or providers?
5. How many impartial hearings have you litigated? How many have been successful when appealed?

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