

Good Grades and IDEA Eligibility

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Framing the Issue

- Can a student who has all As and Bs on their report card also be determined eligible for Special Education?

School Attorney Perspective

- Why does parent want ESE status?
 - Legitimate reason
 - Student needs special education
 - As defined in 6A-6.03411(1)(kk)
 - Questionable reasons
 - McKay Fraud (“Want Private School? Ask me How?”)
 - Protection from DJJ consequences
 - Other considerations
 - Accommodations on FCAT/SAT
 - Some general education students are poor test takers. This is not make them all disabled.
 - Ennobles Waiver
 -

School Attorney Perspective

- Why does parent want ESE status?
 - Legitimate Reason
 - Student needs special education
 - As defined in 6A-6.03411(1)(kk)
 - Questionable Reasons
 - McKay Fraud (“Want Private School? Ask me How”)
 - “11th Hour Referrals” to avoid behavior consequences
 - Other Considerations
 - Accommodations on FCAT/SAT
 - Ennobles Waiver
 - Over identification

Parent Attorney Perspective

- School Districts may be too quick to rely upon only grades when determining whether a student requires specialized instruction
- Academic progress is not the only determination
 - Speech
 - Language
 - Fine motor skills
 - Gross motor skills
 - Emotional/Behavioral/Social Impacts

What we can agree upon

- Must remain student focused
- Consideration is whether student needs special education
 - What might that look like?
- No one factor should be determinative
- School grades may be one factor, but is often subjective
 - Nice teachers see students try hard, give inflated grades

What the Law Says

- Federal Law: 2-prong test to be considered a child with a disability under IDEA:
 1. Have one of the specified impairments
 2. Because of the impairment, need special education and related services

34 CFR 300.8

- State Law: DHH, VI, OI, OHI, TBI, E/BD, ASD include in the criteria for eligibility:
 - “[t]he student needs special education as defined in Rule 6A-6.03411(1)(kk).”
- State Law: SLD
 - “The student continues to need interventions that significantly differ in intensity and duration from what can be provided solely through general education resources to make or maintain sufficient progress.”

Definition of Special Education in FL

- Special Education means specifically designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including:
 - a. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - b. Instruction in physical education

Rule 6A-6.03411(1)(kk)

Additional Guidance

- OSEP
 - Letter to Clark, 48 IDELR 77 (March 8, 2007)
 - Letter to Anonymous 55 IDELR 172 (January 13, 2010)
- Case Law
 - D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., 2012 WL 1992302, 59 IDELR ¶ 2 (6th Cir. 2012).
 - D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., 832 F. Supp. 2d 755, 56 IDELR ¶ 255 (S.D. Tex. 2011).
 - W.H. ex rel. B.H. v. Clovis Unified School Dist., 2009 WL 1605356, 52 IDELR ¶ 258 (E.D. Cal. June 8, 2009).
 - State of Hawaii, Department of Education v. Zachary B. ex rel. Jennifer B., 2009 WL 1585816, 52 IDELR ¶ 213 (D. Hawaii June 5, 2009).
 - Williamson County Board of Education v. C.K., as parent and next friend of, C., a minor child, 2009 WL 499386, 52 IDELR ¶ 40 (M.D. Tenn. February 27, 2009).
 - N.G., et al. v. District of Columbia, et al., 556 F. Supp. 2d 11, 50 IDELR ¶ 7 (D. D.C. 2008).
 - Mr. and Mrs. I, as parents and next friends of L.I., a minor v. Maine School Administrative District No. 55, 2004 WL 2397402, 42 IDELR ¶ 59 (D. Me. October 27, 2004).
 - D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., 2012 WL 1992302, 59 IDELR ¶ 2 (6th Cir. 2012).
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Questions, Concerns, Comments