

Out-of-district placements

“How can I get my school district to pay for an out-of-district educational placement for my child with disabilities?”

Advocates and attorneys hear this question a lot. The answer is: it depends. On what? On numerous details which are unique to each individual case.

In general, however, all parties should first honestly ask themselves: “have we done everything we possibly can to serve this student in the public school setting?” This calls for out-of-the-box creative thinking. All possible interventions should be explored before pursuing an out-of-district placement.

If you as the parent have concluded that your public school simply cannot serve your child, but your district refuses to consider an out-of-district placement, it’s time to start building your ‘case.’ While these cases are each unique and complex, most will require some form of the following activities.

In general, winning the argument for out-of-district placement requires two things:

1. You must prove, by a preponderance of the evidence, that the placement and services offered by your public school cannot provide your child with a FAPE (free appropriate public education) as evidenced by a lack of Effective Progress to date; and,
2. You must prove, by a preponderance of the evidence, that the placement and services offered by the private school of your choice can provide your child with a FAPE.

Make sure you understand the legal concepts of FAPE¹ and Effective Progress.²

Proving the above requires time, patience, and money. You should proceed (again, generally) as follows:

1. If possible hire a seasoned special education advocate to assist you.

2. Locate the most credible experts you can find who work with children like your child. Have these experts thoroughly evaluate your child. This will establish via a credible source where your child is functioning now, what his developmental and academic potential truly is, where he should be functioning given his unique profile, and what it will take to get him there. Make sure that the evaluator(s) talk to school staff as part of their assessment, otherwise the district is likely to claim that the evaluator “didn’t even bother to talk with the people who are with him every day.” This can seriously weaken your case. Be prepared to wait 6-12 months to get an appointment for an evaluation, and several weeks (or months) more to receive a written report of the results. Also, make sure the evaluators are willing to attend a Team meeting in person (as opposed to teleconferencing in).

3. While pursuing # 2 above, document every single instance of your child’s difficulties in and out of school. Document anything that might possibly help in proving that the current program is not working for him or her. For younger children, a communication book that goes back and forth between home and school is helpful here. It can also provide anecdotal information for your experts who will then be able to use it to sharpen their own evaluations and recommendations. **TIP:** Periodically make copies of the entries in the communication book as these books have a funny way of getting ‘lost,’ especially if the contents are damaging to the public school’s position. Also make sure the pages (and all other documentation) are dated. If a communication book is not possible or not appropriate, simply write a letter to the school each and every time an incident occurs. Keep these letters straightforward and free of accusation or inflammatory language.

4. While pursuing #2 and #3, research various schools that might be a good fit for your child. You

¹ See <http://www.spedwatch.org/files/FAPE.pdf>

² See http://www.spedwatch.org/files/Effective_Progress.pdf

need to be able to present the district with a request for a specific private school(s). Start your search at <http://www.spedschools.com/>

5. When you have narrowed down your choices of out of district schools, have an independent evaluator (get references from your advocate and your independent experts in #2) observe your child in his/her current placement. Then have them visit and explore your desired placement(s). Again, make sure this evaluator is willing to attend a Team meeting in person (as opposed to teleconferencing in).

6. As the reports from # 2 and # 5 become available convene the Team to discuss them. Have the people who did the evaluations come to the Team meeting with you to present and defend their findings and recommendations. It is very easy, and very common, for school districts to say they simply disagree with the independent evaluator when all they have in front of them is a paper report. It becomes much harder to disagree when the person who did the testing is sitting at the table, because a dialogue naturally ensues and the district must justify why they disagree. If you have a savvy advocate at the meeting, too, you are in the best possible position because your advocate can question the independent evaluator and the school (just like eliciting testimony in a court trial) in a way that steers the meeting in the direction of your desired outcome.

If all of the above is done and the district still refuses to budge, request mediation (always a good tactical move even if you don't think it will be productive.) This is a very cooperative/collaborative approach that hopefully will lead to a resolution at the local level.

If mediation is refused by the school or fails, its time to hire an attorney and perhaps file for a hearing before the Bureau of Special Education Appeals (BSEA.)

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