

35th Annual Education Law Conference
The IDEA Today: The Latest and Greatest
Friday, May 11, 2007 at Lehigh University's Mountaintop Campus

7:30 a.m. – 8:30 a.m. Registration and Refreshments

Registration accompaniment provided by the Quakertown High School Jazz Group (with special thanks for the sponsorship of Marie Abbazio)

8:30 a.m. – 9:30 a.m. Special Education Law : Five by Five

This session will provide an overview of five of the most significant developments in special education law in Pennsylvania during the past five years, each exemplifying a key concept under the IDEA and its corollary state regulations.

Keynote Presenter: Perry Zirkel, University Professor of Education and Law, Lehigh University – Bethlehem, PA

9:40 a.m. – 11:00 a.m. A. Sixteen Going on Life: The New Transition Challenge

This session will focus on the requirement in IDEA 2004 and its 2006 regulations for schools to develop measurable postsecondary goals for students of transition age and a summary of performance at the time of transition, including the next steps the student must take to attain the specified outcome. These requirements and the more explicit obligation to involve outside agencies in the IEP team transition-planning process present potential pitfalls for schools. This session will provide participants with practical advice for successfully meeting these requirements.

Moderator/ Dan Burkholder, M.Ed., Special Education Supervisor, North Penn School District- Montgomery

Presenter: County, PA

Co-Presenters: Monica Dodd-Palestis, Esq., Law Firm of Monica Dodd-Palestis - Dover, NJ

Andrew E. Faust, Esq., Sweet Stevens Tucker & Katz - New Britain, PA

B. Parentally Placed Private School Children

This session will provide a legal and practical approach to sorting out what are the obligations of public school districts to resident students who are enrolled by their parents in private schools and who seek special education and other educational services from the district. The focus will be on equitable participation and dual enrollment under the 2006 IDEA regulations, the Pennsylvania School Code, and state regulations. It will also address the right of private school students to services under Section 504 in light of *Lower Merion School District v. Doe*, recently argued before the Pennsylvania Supreme Court.

Moderator: Claudia Huot, Esq., Wisler, Pearlstine, Talone, Craig, Garrity & Potash - Blue Bell, PA

Presenters: Michael Kelly, J.D., Director of Pupil Services, Lower Merion School District- Ardmore, PA

Philip J. Murren, Esq. Ball, Murren & Connell- Camp Hill, PA

C. Gaskin Implementation

The *Gaskin* settlement agreement continues to focus on districts' level of inclusion. This session will examine the implementation of this statewide settlement agreement. Illustrative foci include: How is the LRE index currently calculated, and what are the initial results? What is the status of Gaskin Advisory Panel in relationship to the settlement agreement's specification of its membership, activities, and deadlines? What are the imminent issues in the foreseeable future?

Moderator: Gina McFalls, Director of Special Education Williamsport Area School District- Williamsport, PA

Co-Presenters: Judith Abbott Gran, Director, Disabilities Rights Project, Public Interest Law Center of Philadelphia – Philadelphia, PA

Pat Fullerton, Chief Counsel, Pennsylvania Department of Education - Harrisburg, PA

D. Can you Keep a Secret?: How a Breach of Confidentiality Can Land You in Federal Court

The U.S. Supreme Court has held that there is no individual right to sue for a breach of confidentiality under the Family Education Rights and Privacy Act. This session will address litigation under alternative sources of confidentiality protections, including, for example, Section 1983 claims based on constitutional right to privacy and Section 504. Find out what situations can give rise to such claims, how courts are ruling, where you are most vulnerable, and how to successfully respond to potentially explosive issues to reduce the risk of liability.

Moderator/ Scot Engler, Director of Student Services, Palmerton Area School District - Palmerton, PA

Reactor :

Presenter: Linda Fusco, Esq. Independent IEP Facilitator, Consultant, and Staff Development

Reactor: Sarah Dragotta, Esq. Law Office of Sarah Dragotta - Glenside, PA

E. Discipline, including Manifestation Determinations

The new IDEA regulations have resulted in a shift as compared to the language addressed in IDEA 1997, ranging from no notable changes to subtle but significant changes in the direction of less disciplinary protection. The presenters will identify and discuss the potential implications for school districts and parents, including issues relative to behavior intervention plans, manifestation determinations, functional behavioral assessments, and interim alternate educational settings. They will also address the FAPE obligations under the new regulations, for both identified students and those in the reduced “deemed to know” category.

Moderator Marie M. Abbazio, Independent Evaluator, - PA

/Presenter:

Co-Presenters: Jeff Champagne, Esq., McNees Wallace & Nurick - Harrisburg, PA

Jerry Tanenbaum, Esq., Schander Harrison Segal and Lewis - Philadelphia, PA

F. Greatest Hits in “Reading” Case Law

With the increased focus on progress monitoring and meeting AYP in reading, nearly 40 published hearing/review officer and court decisions have focused on reading methods under the IDEA. This session will share a systematic case law analysis and provide best practice recommendations in light of the ongoing national controversies under the IDEA and NCLB.

Moderator: Diane Smith, Special Education Coordinator, Smethport Area School District - Smethport, PA

Co-Presenter: Dr. Kathleen Conn, Principal, Philadelphia School District - East Lansdowne, PA

Sandra L. Lascari, Esq., Law Offices of Sandra Lascari, - Madison, NJ

11:10 a.m. – 12:30 p.m. Repeat of session A, B, C, D, E, and F

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12:30 p.m. - 1:30 p.m. Lunch

1:40 p.m. – 2:40 p.m. **G. Who Has the Burden of Proof?**

Has the Supreme Court's decision in *Schaffer v. Weast* made a significant difference in the handling and trying of a special education case? The session will review *Schaffer* burden of proof analysis as interpreted and applied by hearing/review officers and the lower courts. The session will discuss the practical implications of these interpretations for not just the parties' attorneys but the parties themselves.

Moderator: *Dr. Gina Scala, Professor, East Stroudsburg University*

Co-Presenter: *Jane Williams, Esq., Sweet Stevens Tucker & Katz – New Britain, PA*
Charles W. Jelley, Esq., Tremba & Jelley – Greensburg, PA

H. NLCB and IDEA - Imperfect Together

No Child Left Behind (NCLB) and the Individuals with Disabilities Education Act (IDEA) are two major federal initiatives that overlap in several areas, but seem at times to operate at cross-purposes with one another. This session will examine the current status of several of the relevant issues in Pennsylvania and New Jersey including adequate yearly progress (AYP); assessment requirements, including the 1% and 2% flexibility exceptions, disaggregated subgroups, including the "N" size; and the issue of highly qualified personnel including the implementation of HOUSSE requirements for teachers.

Convener/ *Mike Kaelber, Senior Associate, Legal Counsel, New Jersey School Boards Association - Trenton, NJ*

Presenter:

Co-Presenter: *Dr. Diane Funsten, Educational Consultant, Pennsylvania Training and Technical Assistance Network-Harrisburg, PA*

Reactor: *Leslie Collins, Esq., Pennsylvania State Education Association - Harrisburg, PA*

I. We Can Work It Out: Dispute Resolution in Pennsylvania and New Jersey

IDEA 2004 and its recent regulations include many new requirements for resolving disputes between parents and districts. The session will focus on these new requirements and how the states of Pennsylvania and New Jersey are implementing them. The goal of the session is to help parents, administrators, advocates and attorneys understand the requirements for resolving disputes in lieu of extended litigation.

Moderator: *Harold Tarriff, Ed.D., Director of Special Services for the School District of the Chathams – NJ*

Presenters: *Kerry V. Smith, Esq., Director of the Office for Dispute Resolution*
Cynthia Hoenes-Saindon, Coordinator of Dispute Resolution at the New Jersey Department of Education-Trenton, NJ

J. Waivers in Special Education: Legal Issues and Practical Implications

This session will examine pertinent legal rulings and discuss practical implications of the role of waivers in special education, with particular attention to reevaluation and settlement waivers. The presenters will respectively provide school district and parent attorneys' perspectives regarding the utility and caveats of waivers.

Moderator: *Julie Fogt, School Psychologist, Centennial School - Bethlehem, PA*

Co-Presenters: *Caryl Oberman, Esq., Law Office of Caryl Oberman- Willow Grove, PA*
Andria B. Saia, Esq., Levin Legal Group, - Huntingdon Valley, PA

K. Due Process Hearing Trends

This session will review the trends in the frequency and outcomes of hearing officer decisions nationally, with due attention to the Third Circuit. The discussion will focus on the practical implications of these trends and recommendations for improvement in the system for the mutual benefit of school districts and parents of children with disabilities.

Moderator: *John Campion, President, Professional Management Systems - Mahwah, NJ*

Co-Presenter: *Thomas Mayes, Esq., Special Education Legal Counsel, Iowa Department of Education*

L. Response to Intervention (RTI) One Year Later: Legal and Practical Implications

As of the new IDEA regulations, RTI has become a potential model for determining eligibility for students with specific learning disabilities. Although legal and practical implications of the methodology are still under development, several Pennsylvania districts have begun to implement an RTI model of school-wide change and are using the data derived through the RTI process in the eligibility decision-making. This session is designed to help parents and school administrators understand and evaluate the implementation of RTI from a legal lens.

Moderator: *James Newcomer, Acting Assistant Superintendent, Quakertown Community School District - Quakertown, PA*

Co-Presenters: *David T. Painter, Esq., McAndrews Law Offices - Berwyn, PA*
Dr. Edward S. Shapiro, Iacocca Professor of Education, Professor of School Psychology, and Director, Center for Promoting Research to Practice, Lehigh University - Bethlehem, PA

2:50 p.m. – 3:50 p.m. Repeat of sessions G, H, I, J, K, and L