

Chalkboard



An Education Newsletter from the Attorneys of Rosenstein, Fist & Ringold

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Field Trips and Special Needs Students

by Cheryl A. Dixon

This is the time of year that questions regarding special needs students' participation in field trips most commonly arise. There may be situations where it does not seem appropriate for a student to attend a field trip, such as an autistic student who has separation anxiety and has not spent the night away from her parents attending an overnight trip out of town, or a student with mobility issues on a field trip to someplace that will make mobility difficult. Regardless of the District's concerns about a student's involvement in a field trip, school officials must work with parents to address the topic of field trips and provide accommodations that will permit the student to participate as appropriate.

If you are aware of a field trip that may be problematic for a student, schedule an IEP meeting with the parents to discuss it with them. Approach the meeting with a problem-solving attitude so the parents don't presume their student will automatically be excluded from the field trip. At this meeting,

review accommodations already afforded to the student in her IEP and consider which may be appropriate supports for a particular field trip. Seek input from the parents on accommodations that may be necessary, as well as how the student can be prepared for the field trip, and for a contingency plan if an emergency occurs during the field trip. Be sure to document all the decisions reached as well as any additional accommodations that are agreed to and why in an IEP amendment or Written Notice.

Field trips are an important part of the school experience and students with disabilities should be encouraged to participate. If a parent seems reluctant to let his student go on a field trip, but the IEP Team believes she will do well, try emphasizing that the trip will give the student a chance to work on some of her IEP goals – whether academic, social or behavioral. Let the parent know you will discuss any concerns with the appropriate individuals where

the field trip will be held beforehand and work with the venue on educating appropriate staff on the student's disability. Likewise, if a particular field trip would not be appropriate for a specific student, honestly and openly discuss the issue with the parents and how accommodations would not assist in making the field trip successful for the student. If you have a question as to this issue, or any other special education issue, please contact your school district's attorney.

Suggestions for School Districts Conducting Student Interviews for Disciplinary Reasons

by Staci L. Roberds

When interviewing a student for conduct which could result in the student's suspension, school districts should take certain precautions early in their investigation to preserve evidence for presentation at a possible student suspension hearing. In the initial meeting with a student, an administrator will typically ask for the student's side of the story about what happened. A student may verbally deny conduct or admit wrongdoing. In any event, the student is usually then asked to make a written statement. When writing a statement, a student will sometimes omit certain facts that were previously included in the verbal statement. If

the facts omitted include the student's admission of wrongdoing, the school district is left in the situation where the student can deny the admission of wrongdoing at the suspension hearing. Although there may be contrary testimony from an administrator that the student admitted to certain conduct, this testimony alone may not always justify the proposed disciplinary action requested against the student.

To avoid this situation and others, school districts should tape record all student interviews. There will then be no question as to what the student admitted or denied to administrators during the interview. Alternatively, if a student interview is not tape recorded, school districts should have two administrators present in the student interview, with one serving as a witness to the interview. This administrator witness, if necessary, can then corroborate what occurred during the interview at the suspension hearing. Moreover, if there are eyewitnesses to the inappropriate student conduct, they should be present to testify at the student suspension hearing, if possible, even if they have previously provided a written witness statement. Further, school districts should make certain that the student suspension hearing is recorded in case the student challenges the disciplinary decision or the procedure utilized by the school district at a later time.

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Depending on the student misconduct involved, several questions may arise regarding the student suspension process and how to handle certain issues at the student suspension hearing. If this occurs,

school districts are reminded to contact their attorney for guidance through the suspension process and to ensure the proper procedure is followed.

School Districts and the Medicare Data Match Questionnaire

by Adam S. Breipohl

Employers, including school districts, may receive somewhat cryptic letters from a Federal contractor purporting to act at the behest of the Centers for Medicare and Medicaid Services ("CMS") claiming that the district must complete a questionnaire online regarding their "group health plans" and information on employees who are Medicare beneficiaries or are married to beneficiaries. While school administrators may be dubious about these letters, they are in fact legitimate requests on behalf of the Federal government and school districts are legally required to respond. This article provides an overview of the program to which these requests pertain and school districts' obligations in responding to the requests.

In carrying out its responsibilities under the "Data Match" program (a joint effort between CMS, the Internal Revenue Service ("IRS"), and the Social Security Administration), CMS obtains certain information from the IRS on individuals who (1) are Medicare beneficiaries or are married

to beneficiaries and (2) work for a "qualified employer" (those with more than 20 employees). 42 U.S.C. § 1395y(b)(5)(A). CMS then forwards the information on those individuals to certain "intermediaries and carriers," i.e. federal contractors that handle the data collection for the government. *Id.* § 1395y(b)(5)(B). These intermediaries and carriers are then required to contact the employers of the designated employees to confirm whether those employees are covered under a "group health plan" and identify any situations where the employer's group health plan should be the primary payer and Medicare should be the secondary payer. *Id.* § 1395y(b)(5)(C)(i). The reason for this process is to prevent unnecessary expenditures from the Medicare trust fund and reduce the administrative costs of correcting mistaken primary payments by Medicare.

After receiving the CMS contractor's request, employers must respond within thirty (30) days. The authorities governing this program apply largely identically to government employers and other employers, so school districts are legally required to respond to the questionnaire, although government employers are not subject to certain monetary penalties for failure to respond that apply to other employers. *Id.* § 1395y(b)(5)(C)(ii).

Employers must complete the questionnaire by accessing a website maintained by CMS and answering a series of questions that are broadly related to the employers' health insurance plans and the coverage of the employees the IRS originally



identified to CMS, i.e. Medicare beneficiaries and their spouses, under those plans. Guidance provided on CMS's website provides an in-depth overview of the program, what the questionnaire entails, and what an employer needs to do in order to fully respond.¹

It should be noted that if the district administrators review the instructions and conclude that it will take more than the allotted thirty days to respond to the inquiry, they can call the CMS contractor who sent the letter and request an extension, which will grant the district an additional thirty days to respond.

Overall, school districts should be aware of the Data Match program so that they can ensure compliance with their legal obligations in the event they are contacted by a CMS contractor. Should the issue arise, districts should confirm

the legitimacy of the requesting entity before responding or releasing any personal information to ensure the request is not part of a phishing scam. Districts should also consider contacting their legal counsel or the CMS contractor with any concerns regarding the Data Match questionnaire.

¹See CENTERS FOR MEDICARE & MEDICAID SERVICES, INSTRUCTIONS FOR COMPLETING THE GROUP HEALTH PLAN REPORT FOR THE IRS/SSA/CMS DATA MATCH (Dec. 10, 2015), available at <https://www.cms.gov/medicare/coordination-of-benefits-and-recovery/employerservices/downloads/instructions-for-completing-the-group-health-plan-report-for-the-irs-ssa-cms-data-match.pdf>

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Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

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