



EDUCATION PRACTICE

ALERT

HAS MA GONE MIA?

WHY PARENTS ARE REFUSING TO CONSENT TO THE USE OF MA FUNDS

An increasing number of parents, often on the advice of counsel, are refusing to give consent to allow school districts or intermediate units to access medical assistance funds to pay for special education services that are both medical and educational. Under the Individuals with Disabilities Education Act (IDEA), school entities, with parents' consent, can tap into Medicaid funds for students who are eligible for medical assistance to use those funds for services that are both educational and medical. The question now becomes, why are these parents refusing to consent?

The issue appears to have risen from the Pennsylvania Department of Public Welfare's (DPW) efforts to assert liens against parents for those services paid for through medical assistance when the parents later have financial resources to pay for the services. A recent case illustrates how the process works and why parents and their attorneys are so concerned about this issue, although perhaps unnecessarily so in most cases.

In a recent case out of the Lehigh Valley, the student had multiple disabilities from a "traumatic injury that occurred at birth and for which [p]arents recently agreed to a monetary settlement in a medical malpractice case." Through the years, the local school district had sought and obtained consent from the parents to use medical assistance funds towards education and medical services provided through the student's IEP. When the parents settled the medical malpractice case, which attempted to assign fault for the child's disability to the medical malpractice, DPW asserted a lien against the settlement funds for services provided at public expense, including the IDEA services. Ultimately, the school district was

ordered to pay back the lien on behalf of the parents in order to comply with the IDEA requirement that a FAPE be free to the parents and student.

The approach used by the DPW of asserting a lien claim against the parents for medical assistance has caused many parents' attorneys to advise their clients to simply not give consent to use medical assistance funds for IDEA services in all cases. While parents have the right to refuse to give consent, such an approach clearly denies school entities a significant source of funding for IDEA services. Moreover, the ability of DPW to assert a lien against parents for such services is likely limited only to those cases in which a third party is at fault for causing the injuries that resulted in the disabling conditions, for example a traumatic brain injury, and where the parents seek and obtain money in the form of a judgment or settlement from that third party. In other cases where there is no third party to blame for the disabling condition, such as Autism, ADHD or a specific learning disability, the likelihood of any type of lien claim seems extraordinarily remote and perhaps such concerns are unreasonable.

Given that parents have the right to refuse to consent to the use of medical assistance funds, there is little that school districts can do in this circumstance. Nonetheless, it is helpful for districts to be aware of the reasons for this trend.

If you have questions regarding this Alert, please contact Timothy Gilsbach at 610.397.6511 or at tgilsbach@foxrothschild.com or any member of Fox Rothschild's Education Law Group.