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GA Gov. Okays Voucher Program for Students with Special Needs

Parents using vouchers responsible for own transportation

On May 18, Georgia Governor Sonny Perdue signed into law SB10, a bill that provides for state money that would have gone to the public school system to educate a child with disabilities with a voucher that parents can spend at a private school. The new law is effective with the upcoming 2007-2008 school year.

The state Senate estimates that some 4,000 children will use the voucher during the first year of the program, and ultimately, some 15,000 children will be in the program. The estimated average voucher will be about \$9,000 a year, and the amount of each voucher will depend on the severity of the child's disability.

Qualifications

Students qualify for the voucher if:

- A student's parent currently resides within Georgia and has been a Georgia resident for at least one year;
- Has spent the prior school year in attendance at a Georgia public school and has an IEP written by the

school in accordance with federal and state laws and regulations;

- Has one or more of the following disabilities: Autism; Deaf/blind; Deaf/hard of hearing; Emotional and behavioral disorder; Intellectual disability; Orthopedic impairment; Other health impairment; Specific learning disability; Speech-language impairment; Traumatic brain injury; Visual impairment.

Transportation provisions

The first provision says in part, "*The parent may choose for the student to attend another public school within the resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program. If the parent chooses this option, then the parent shall be responsible for transportation to such school.*"

The second provision says in part, "*The parent may choose to enroll the student in and transport the student to a public school outside of the student's resident*

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Supreme Court Victory for Family Seeking to Sue without a Lawyer in Special Ed Plan Dispute

On May 21, the Supreme Court ruled in favor of the parents at the center of the case *Winkelman v. Parma City School District, No. 05-983*, and with the victory, parents of children with disabilities now have the right to go to court without a lawyer to challenge their public school district's individualized plan for their child's education. The case was argued on Feb. 27.

In the case, the justices ruled in favor of the Winkelmans from Parma, OH. The couple was unhappy with the Parma City School District's proposal to meet the special needs of their son with autism, Jacob, then six years old when the lawsuit began. The Winkelmans could not afford to continue paying a lawyer to sue the district.

As explained by the *New York Times*, "In general, federal law allows people to represent themselves in court. But most federal courts have barred parents of children with disabilities from appearing without a lawyer in cases filed under the Individuals with Disabilities Education Act, which guarantees all children a free appropriate public education (FAPE)."

Can parents sue under IDEA without a lawyer?

The central question before the Supreme Court was, whether the act confers rights only on children, or whether parents, too, have rights under the act.

Justice Anthony M. Kennedy, in writing for the majority, said their conclusion was that the

statute guarantees rights not only to children, but also to their parents, and that parents who go to court on behalf of their child are representing their own interests, as everyone is entitled to do in any federal court case.

The *Los Angeles Times* reported that several national education groups had urged the court to side with the school dis-

trict because, in their view, a ruling for the family would spur more costly and drawn-out lawsuits.

"I would prefer to give Jacob the best chance with an attorney," Winkelman told The Associated Press after the ruling was announced.

Sources: *New York Times*, 5/21/07; *Los Angeles Times*, 5/22/07

Infant Seat Recall Embrace Infant Car Seat/Carriers

The U.S. Consumer Product Safety Commission and the National Highway Traffic Safety Administration (NHTSA), in cooperation with Evenflo Company Inc., announced on May 10 a recall of Evenflo Embrace Infant Car Seat/Carriers, manufactured by Evenflo Company Inc.

When used as an infant carrier, the handle can unexpectedly release, causing the seat to rotate forward. When this happens, an infant inside the carrier can fall to the ground and suffer serious injuries. Evenflo has received 679 reports of the handle on the car seat/carriers unexpectedly releasing, resulting in 160 injuries to children. These reports include a skull fracture, two concussions, cuts, scrapes and bruises.

The recall involves Evenflo Embrace Infant Car Seat/Carriers made before April 8, 2006. The recalled car seat/carriers have model numbers beginning with 317, 320, 397, 398, 540, 548, 549, 550, 556, 597, 598 or 599. The model number and production date information can be found on a white label on the bottom of the carrier and on the top of the convenience base. Models beginning with "5" are units sold with the travel system (compatible stroller). "Evenflo" is on the carrying handle and car seat base. Embrace infant car seat/carriers made on or after April 8, 2006 are not included in this recall.

They were sold at stores nationwide from December 2004 through September 2006 for between \$70 and \$100 when sold alone and between \$140 and \$200 when sold with a compatible stroller.

Do not use the handle until the repair kit has been installed. The product can continue to be used as a car seat when secured in a vehicle. Contact Evenflo to receive a free repair kit that strengthens the handle latch. Recall notices will be sent to all registered owners of the recalled product. The recalled units should not be returned to the retailer.

Customer Contact: For additional information, contact Evenflo at (800) 490-7497 between 8 a.m. and 5 p.m. ET Monday through Friday or visit the recall Web site at www.embracehandle.com.

Where Does It Say That?

By Peggy A. Burns, Esq., Education Compliance Group, Inc.

All citations are to the 2006 Regulations which implement the Individuals with Disabilities Education Act (2004), except as otherwise noted. Those references made to the 1999 Regulations incorporate information still relevant and effective, although not specifically incorporated into the 2006 Regs.

Q: *Can drivers, dispatchers and others in the transportation department receive copies of IEP's, or, at the least, health and medical information which can impact transportation?*

A: Yes. Each related service provider must have access to the child's IEP and be informed of his or her specific responsibilities related to implementing the IEP and of the "specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP." §300.323(d).

In addition, related services providers must receive information about relevant IEP changes when they are made without the direct involvement of those providers. Specifically, when an IEP has been changed or revised—and there are times this can occur without an IEP meeting—the Official Analysis to the Regs states that "it is important that the personnel responsible for implementing the revised IEP be notified and informed of the

changes with respect to their particular responsibilities." That means, for example, that if a behavior support plan is added to an IEP in response to behavior which a student displays both in the classroom and on the school bus, the child's driver and attendant should be notified of any responsibilities under the plan.

Moreover, §300.610 ff. pertaining to "Confidentiality of Information" has been changed slightly with the intent, according to the Analysis, of stating "more clearly" that "disclosures of personally identifiable information from education records of children with disabilities can be made without parental consent if the disclosure without parental consent would be permissible under FERPA." That includes disclosure to "school officials with legitimate educational interests, as determined by the educational agency or institution." And that's aside from whether the "school official" is a related service provider or transports students with disabilities on the same basis as nondisabled students.

While the discretion to release records to transporters remains with policy makers, if the policy makers simply recognize the need for school bus personnel to have student information relevant to the ride, they

can include in the required annual notification to parents the fact that they will release necessary student health, behavior, emergency information and the like to drivers and attendants.

You might direct these officials to "Sharing Student Health and Medical Information with School Transporters," a February 2003 Information Report of NASDPTS (National Association of State Directors of Pupil Transportation), by Peggy A. Burns, available at www.nas-dpts.org. Excerpts from this Report are included in the National School Transportation Specifications and Procedures adopted by the Fourteenth National Congress on School Transportation (May 2005, at pp. 369-375).

Peggy Burns is the producer and host of the training videos, Steering Clear of Liability: Training for School Bus Drivers and Confidential Records: Training for School Bus Drivers, as well as the resource Confidential Records: A Guide for Pupil Transportation Officials. They are available from Education Compliance Group, Inc., P.O. Box 221, Lafayette, CO 80026. Call (888) 604-6141, or order by email at ecginc@qwest.net.