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**CLIENT ALERT**

To: Education Clients  
From: Murphy, Hesse, Toomey & Lehane, LLP  
Date: July 2003  
Re: New Developments in Special Education Law

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**I. Attorneys' Fees Under IDEA**

Many school district personnel have asked when parents of children with special needs are entitled to attorneys' fees. The U.S. District Court, District of Massachusetts, recently decided a case that addresses this issue.

In Doe v. Boston Public Schools, 39 IDELR 31 (D.Mass. 2003), the U.S. District Court, District of Massachusetts held that only plaintiffs who obtain a judicially sanctioned change regarding their child's special education (i.e., a judgment on the merits or a court-ordered consent decree) are entitled to attorneys' fees, pursuant to the IDEA, 20 U.S.C. § 1400 et. seq. In so doing, the court determined that the Supreme Court's decision in Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources, 532 U.S. 598 (2001), which was decided under the Fair Housing Amendments Act, 42 U.S.C. § 3601 et. seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq., also applies to claims

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brought under the IDEA.

Jane Doe, an eighteen year old student diagnosed with severe psychiatric disabilities, had been hospitalized in a psychiatric unit for three and one half months. The Department of Mental Health (DMH) evaluated Doe and recommended a residential program, the Lighthouse Program at the Children's Collaborative. Boston Public Schools convened a TEAM meeting to discuss placement and to generate a new IEP. Instead of Lighthouse, the TEAM recommended the McKinley Vocational High School. Doe rejected the IEP. Subsequently, when Doe was discharged from the psychiatric hospital, she enrolled in Lighthouse and filed a request for hearing with the Bureau of Special Education Appeals. Boston Public Schools and Doe attempted to resolve their issues through mediation but were unsuccessful. A hearing was scheduled.

Immediately prior to the hearing, the parties reached a settlement agreement. Boston Public Schools agreed to fund a private educational day placement. Boston Public Schools generated a new IEP and Doe signed it in the hearing officer's presence. Doe then requested that the new IEP be read into the record. The hearing officer declined her request and explained that the "general [Bureau] practice has been for the hearing officer to decline to endorse or otherwise affirm parties' private settlement agreements by reading them into the record."

Shortly thereafter, Doe filed a complaint in Federal court, seeking attorneys' fees on the grounds that she was a prevailing party as she had obtained precisely the educational placement that she sought.

The district court dismissed Doe's complaint because Doe achieved her private educational day placement through a private settlement, not through a judicially sanctioned order. As such, Doe did not satisfy Buckhannon's definition of "prevailing party." In reaching its decision, the court relied upon decisions rendered in the Second and Third Circuit Court of Appeals,<sup>1</sup> as well as Massachusetts Federal District Court,<sup>2</sup> which held that the definition of "prevailing party" set out in Buckhannon applies to the IDEA.

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<sup>1</sup>See J.C. v. Regional School District 10, Board of Education, 278 F.3d 119 (2d Cir. 2002); John T. ex rel. Paul T. v. Delaware County Intermediate Unit, 318 F.3d 545 (3rd Cir. 2003).

<sup>2</sup>April M. v. West Boylston Public Schools (D. Mass. August 15, 2001)(Swartwood M.J.)(unpublished memorandum and order).

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**II. Graduation and Students with Disabilities**

Several school districts have requested clarification regarding graduation requirements for students with disabilities. What follows is a brief summary of Massachusetts law and pertinent cases.

A student with a disability who is eligible for special education services, pursuant to the IDEA, is entitled to receive a publicly funded special education until s/he is twenty-two years of age or attains a “high school diploma or its equivalent.” M.G.L. c. 71B, § 1. Beginning with the graduating class of 2003, as a condition for receiving a high school diploma, all Massachusetts students must satisfy the requirements of the “competency determination” by passing the grade 10 MCAS in English language arts and mathematics (or, in some instances, the MCAS Alternative Assessment) as well as local graduation requirements. M.G.L. c. 69, § 1D.

Within the past year, there have been two significant decisions issued by the Bureau of Special Education Appeals that address issues regarding local graduation requirements and students with special needs.

In the first, Needham Public Schools, 8 MSER 153 (2002), the hearing officer agreed with the school district that waiving the cuts/unauthorized absences policy would erode one of the educators’ fundamental mission, which is to instill self-responsibility and accountability. The hearing officer declined a student/parent’s request to allow the student, who had obtained insufficient credits to graduate because of excessive cuts, to attend graduation and receive a blank diploma. While agreeing that the student presented with depression and ADD, the hearing officer determined that the school district had made appropriate accommodations for his disabilities and that it took his depression and ADD into consideration throughout his junior and senior years. Thus, the hearing officer found for the school district.

The hearing officer in the second significant decision, Arlington Public Schools, 8 MSER 133 (2002) held that the alleged failure to meet goals and objectives in an IEP was not a basis for invalidating a diploma. In this case, a student, enrolled in college and working, was denied compensatory and transitional services. The hearing officer reasoned that the student had achieved the educational outcomes contemplated under state and federal law and could not establish any substantial harm necessary to show that the lack of a transition plan would deprive him of any educational benefit. In addition, the hearing officer held that equitable considerations warranted dismissal of the student’s claim for compensatory services since the parent/student had reduced on their own the special education services offered by Arlington, chose not to access additional special education services offered by Arlington, and decided not to access additional

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special education services offered by Arlington during the 12<sup>th</sup> grade. By fulfilling local standards, the students received a diploma. As such, the parents/student could not now allege that the diploma was invalid because the student failed to meet the goals and objectives set out in his IEP. Thus, the hearing officer found for the school district.

Murphy, Hesse, Toomey & Lehane is committed to keeping our clients well-informed. If you have any questions or concerns, please do not hesitate to contact our office.

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