



We have the legal right of way.

SPECIAL EDUCATION: Private Insurance & Medicaid

The Individuals with Disabilities Improvement Act (IDEA) requires states and local school districts to provide a free appropriate public education (FAPE) to all children who are eligible to receive services. FAPE includes the provision of special education and related services which meet state educational standards and federal requirements. These services must be provided as written in the child's individualized education program (IEP) and at no cost to parents. School districts may access, as appropriate, available public sources of support (for example, public insurance or Medicaid programs) to pay for required services to the extent that parents would not incur a financial loss by the use of these other sources of support.

Does the Individuals with Disabilities Improvement Act (IDEA) address the use of private insurance and/or Medicaid to pay for special education services?

Yes. IDEA specifically authorizes the use of Medicaid. The regulations also authorize the use of a parent's private insurance.

May a school district compel a parent to use Medicaid or private insurance when it is available to the family?

No. The U.S. Department of Education has stated that this use must be voluntary. A school district cannot deny services if parents refuse to authorize the use of Medicaid or private insurance. Moreover, such use must not result in any cost to the parents, such as: co-payment, deductible, or reduction of an annual or lifetime cap on coverage.

What if the school district offers to pay the parents' costs associated with using private insurance?

The school district can eliminate the possibility of cost to the parents by paying for the deductible or co-payment. Nevertheless, there may be circumstances where parents will still not want to use the private insurance policy, or Medicaid. For some



students with significant needs, even a very substantial lifetime cap could be quickly used up, requiring the family to be very careful about when the insurance policy is used. Both Medicaid and private insurance companies may limit how frequently they will pay for an item. Therefore, a parent's use of insurance or Medicaid to pay for special education and related services is voluntary.

What if the district offers to pay the parents' costs associated with using Medicaid?

A school district may pay the costs of accessing the private or public insurance. However, the school district can not require the parents to use public insurance where there is "financial cost." Financial cost includes:

- **out-of-pocket expenses**, such as deductibles or co-payments;
- **a decrease in available lifetime coverage or any other benefit**, including the family paying for services that would otherwise have been covered;
- **risk of loss of eligibility** for home and community-based waiver programs; and
- **an increase in premiums** or the discontinuation of the insurance.

Furthermore, if the Medicaid-enrolled child also has private insurance coverage, Medicaid would require the use of the private insurance. The IDEA regulations do not affect the requirement under Medicaid that the State Medicaid agency pursue liable third party payers, such as private insurance providers. Under IDEA, parents may not be required to assume costs incurred through use of private insurance so that the school can get reimbursement from the public insurer for services in the child's IEP. Under IDEA, if a Medicaid-enrolled child also is covered by private insurance, the public agency must either obtain the parent's consent to use the private insurance, or not use Medicaid to provide the service.

As with private insurance, a child's right to a Free Appropriate Public Education (FAPE) is not dependent upon whether parents consent to the use of public insurance, such as Medicaid. If the parents refuse to give consent to using Medicaid, the school district is still responsible for providing the recommended services.

What happens if parents refuse to consent to the use of Medicaid/private insurance?

If the parent refuses to consent to their use, special education services cannot be denied.

If the parents agree to use private insurance, when must a district obtain consent?

A school may use parents' private insurance only with the parents' informed consent each time the school seeks to use their insurance. The school must tell parents that their refusal to consent to the use of their private insurance does not relieve the school of its obligation to provide services. The comments to the federal regulations under

IDEA add that parents may not be aware of potential future consequences resulting from the use of their insurance. Accordingly, schools should inform parents of potential consequences, such as exceeding a cap on benefits, and encourage parents to check with their insurance provider before giving consent.

Can a district require parents to sign up for public insurance?

No. School districts can not require parents to sign up for Medicaid or other public benefits programs. However, the school district can request that parents apply for benefits.

Is parental permission needed prior to disclosing information to the Medicaid agency or to private insurers?

Yes. The Family Educational Rights and Privacy Act (FERPA) states that a parent must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records. Therefore, schools may not disclose information about students, including students who are receiving services under IDEA to the State's Medicaid agency in order to determine which of the students are Medicaid eligible, or to seek reimbursement, without the prior consent of the students' parents. School districts are also required to obtain parental consent prior to releasing personally identifiable information about students to public insurance agencies.

What can I do if I have problems with the school district about these issues?

There are a number of actions you can take when you have a disagreement with the school district. To learn more, refer to the DRO publication *Negotiation Skills for Parents: How to Get the Special Education Services Your Child with Disabilities Needs*, disabilityrightsohio.org/assets/documents/negotiation_skills_for_parents.pdf.