

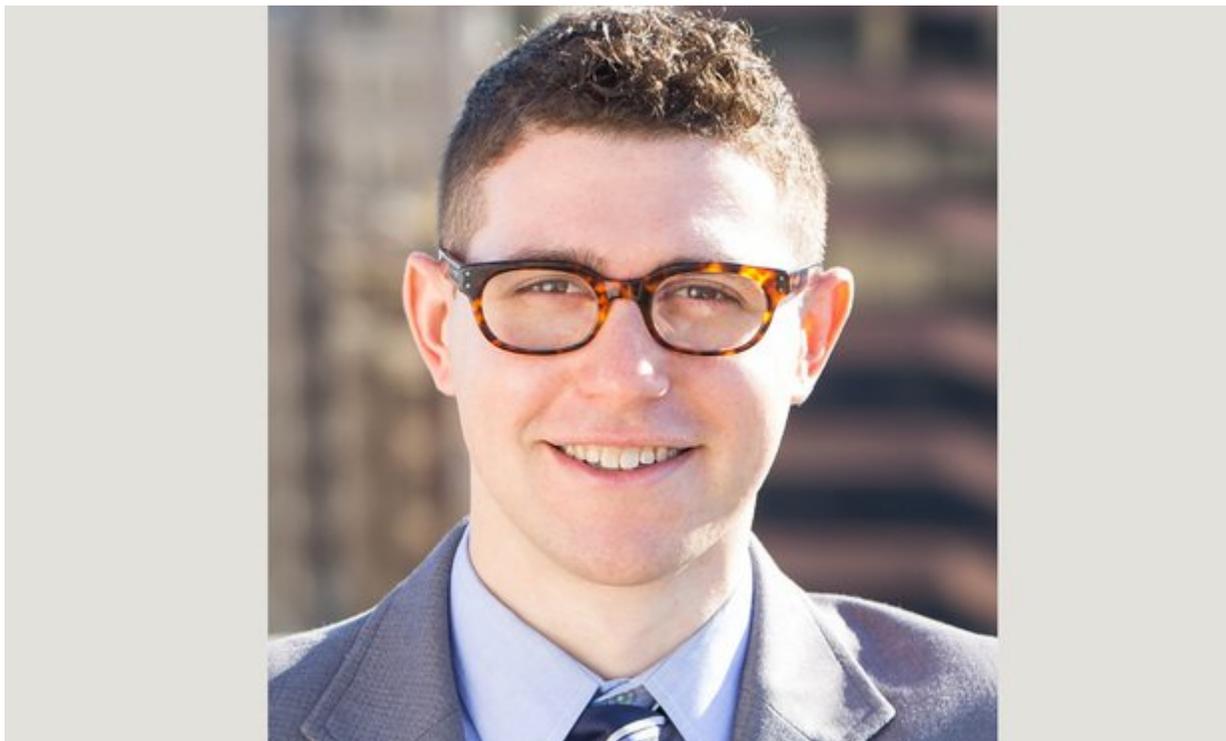
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A Conflict of Interest in Evaluations for Children With Special Needs

Schools stand to lose when they conduct good evaluations, so they often don't.

By **Robin D. Lipp** | April 09, 2021



Robin Lipp of Berney & Sang.

"You should get an independent opinion." The mechanic checked my car's scraping noises and recommended urgent repairs: new brake pads and discs, a new catalytic converter, various fluid replacements. It would cost thousands, and he would offer a fair price. I know nothing about cars. But I suspected there could be a problem with paying the mechanic to diagnose the scrape and apply the fix. Incentives matter. Even with the best intentions, he was probably erring on the side of finding things to fix. What if I had paid the mechanic a flat rate before his inspection to fix anything he might find? Maybe there would be little to fix after all, and perhaps my car would burst into flames as I drove away. I thought to myself: "No way around it. You should get an independent opinion."

In my work as a special education attorney in Pennsylvania, I have learned that the incentives facing school evaluators are like the incentives for a flat rate mechanic. Children with disabilities need evaluations to assess their needs in school, but the Pennsylvania schools have the conflicting roles of diagnosing their needs and providing services to address whatever they find. Parents need an independent opinion.

Background: A Conflict at the Heart

Children with suspected disabilities in Pennsylvania have a right to publicly funded evaluations probing their needs in school. Those evaluations are, typically, the main input into an individualized education program (IEP), which sets the suite of services offered to a child with disabilities. An accurate evaluation is critical for understanding a child's needs and programming appropriately in the child's IEP.

But—in the experience of many special education attorneys—these public evaluations are often less than meets the eye. They can miss a child's needs in school, fail to test in obvious areas of suspected disability, and recommend services that are cost-effective for schools but ineffective for children. There are many factors that might contribute to the problem of bad evaluations. The training and experience of evaluators, for example, is certainly important.

Still, at the heart of the problem is a conflict of interest between public schools and the children with disabilities that they serve. The schools pay for and direct the evaluations, and then they also pay to address any needs uncovered by the evaluations from a fixed budget. Just like the flat-rate mechanic, they have an incentive to identify fewer needs and to offer fewer services.

Aggravating that conflict of interest, schools face liability risk under the Individuals with Disabilities Education Act (IDEA) and related laws if an evaluation shows that a school's services have been inappropriate for a child's needs. When a child's education stalls and the car bursts into flames, the same mechanic is called back to explain the nature of the problem. It should not be surprising that, rather than finding fault in a school's prior work and prior evaluations, school-conducted evaluations commonly identify problems with the parents as the main source of difficulties in school.

Solution: Separate the Evaluations From the Services

In current practice, when parents are able to find attorneys to help address their child's educational crises, attorneys can advise parents of their IDEA right to obtain a private independent educational evaluation at public expense. This is an important but imperfect solution. First, while the independent evaluation is underway, the school's flawed evaluation still determines the services for the child. Second, a school can defend its evaluation in an administrative hearing and potentially avoid payment for the parents' private evaluation. And third, even when a school pays for the independent evaluation, both evaluations become inputs into a child's IEP—the school can give more weight to its own evaluation and less weight to the independent evaluation. As a final recourse, parents have the option to file an administrative action to improve an IEP, but it can take years before that process results in substantive changes to the child's educational program.

A better, more efficient solution would be to improve the quality of the initial public evaluations by removing the conflict of interest. The IDEA allows several options for the state or local agencies that evaluate children with disabilities. Under one of those options, the IDEA allows an independently funded state agency—rather than the educational agencies paying for services—to conduct evaluations. For whatever reason, Pennsylvania has not chosen that option; instead, it melds the conflicting roles of providing services and conducting evaluations. But an independently funded and institutionally separate agency could conduct evaluations for children with disabilities under federal law, giving an unbiased take on a child's needs. With no reward or punishment for finding a need for services or criticizing existing services, an independent public agency would remove a key barrier that stands in the way of stronger evaluations.

As with so many situations in life, we need an independent opinion.

Robin D. Lipp *is an associate at Berney & Sang. He joined the firm after serving as a judicial law clerk in the U.S. District Court for the Western District of Pennsylvania. He earned his Juris Doctor from Harvard Law School and his master's degree in public policy from the Harvard Kennedy School of Government in 2014. Contact him at rdlipp@berneylaw.com.*

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