

# Overview of Special Education Law

Get the basics on the Individualized Education Program (IEP) and your child's rights to special education.

Special education laws give children with disabilities and their parents important rights not available to children in regular education. Specifically, the federal Individuals with Disabilities Act (IDEA) gives families of special education children the right to:

- have their child assessed or tested to determine their special education eligibility and needs
- inspect and review school records relating to their child
- attend an annual "Individualized Education Program" (IEP) meeting and develop a written IEP plan with representatives of the local school district, and
- resolve disputes with the school district through an impartial administrative and legal process.

## Eligibility Under IDEA

Every school district is legally required to identify, locate and evaluate children with disabilities (20 U.S.C. §1412(a)(3)). After the evaluation, a disabled child may be provided with specific programs and services to address his or her special needs.

IDEA defines "children with disabilities" as individuals between the ages of three and 22 with one or more of the following conditions (20 U.S.C. §1401(3)(26); 34 C.F.R. §300.7):

- mental retardation
- hearing impairment (including deafness)
- speech or language impairment
- visual impairment (including blindness)
- serious emotional disturbance
- orthopedic impairment
- autism
- traumatic brain injury
- specific learning disability, or
- other health impairment.

For your child to qualify for special education under IDEA, it is not enough that he has one of these disabilities. There must also be evidence that your child's disability adversely affects his educational performance.

Once a child is found eligible for special education, subsequent evaluations take place at least every three years. If you are not satisfied with the initial evaluation or you feel your child's disability or special education needs have changed, your child is entitled to more

frequent assessments if you so request, and even outside or independent assessments (20 U.S.C. §1414; 34 C.F.R. §§300.530-543).

## **Individualized Education Program (IEP)**

Special education centers on a process for evaluating your child and the development and provision of an individualized education program, or IEP, that meets your child's unique needs. The acronym IEP refers to several inter-related things:

- an initial meeting where the school district determines whether or not your child is eligible for special education
- a yearly meeting where you and school representatives develop your child's educational plan, and
- a detailed written description of your child's educational program.

Every written IEP document must include the same information, although forms will vary from one school district to another.

### **1. Current Educational Status**

The IEP must include a description of your child's current status in school in the areas of cognitive skills, linguistic ability, emotional behavior, social skills and behavior and physical ability (20 U.S.C. §1414(d)(1)(A)(i)(I)). Current functioning may be reflected in testing data, grades, reports or anecdotal information, such as teacher observations. IDEA calls this the "present level of educational performance," and this part of the IEP must describe how your child's disability affects her involvement and progress in the general curriculum. Formal testing or assessments of your child will provide a good deal of information.

### **2. Goals and Objectives**

Goals and objectives are the nuts and bolts of your child's daily program as detailed in the IEP, and generally refer to academic, linguistic and other cognitive activities, such as reading or math. IDEA specifically calls these "measurable annual goals, including benchmarks or short-term objectives" related to your child's specific educational needs and involvement in, if appropriate, the general curriculum (20 U.S.C. §1414(d)(1)(A)(ii)).

While the goals and objectives are usually academic and cognitive in nature, there is no restriction on what they may cover. They should reflect whatever the IEP team determines is important to your child's education. Goals and objectives can relate to physical education, how your child socializes with peers, even how your child will move about the school.

Whether your child is receiving a "free appropriate public education," as required by the IDEA, may depend on whether the program offered by the school district can help her achieve her goals and objectives. If you and the school district disagree about a specific

placement or service, one key issue will be whether your child's goals and objectives can be met without it.

### **3. Instructional Setting or Placement**

The IEP must include information about the instructional setting or placement for your child. At the core of IDEA is the requirement that children with disabilities be placed in the "least restrictive environment" (LRE), commonly referred to as mainstreaming. While IDEA expresses a preference for regular education, it recognizes that some children with disabilities should not be in a regular class. Individual need determines the appropriateness of a placement. If regular classroom placement is not appropriate, IDEA requires that the school district provide a range of alternative placements, including the following:

- regular classes for part of the school day
- special classes in regular schools—for example, a special class for children with learning disabilities
- special public or private schools for children with significant difficulties, such as a school for emotionally troubled students
- residential programs
- home instruction, and
- hospital and institutional placement.

The IEP must specifically include related services -- developmental, corrective and other supportive services, such as speech therapy, transportation or counseling services -- necessary to facilitate your child's placement in a regular classroom or to allow your child to benefit from special education.

### **4. Optional Components**

The IEP may include other components, such as specific teaching methods or class subjects, or anything else the IEP team agrees should be included (20 U.S.C. §1414(d)(1)(A)).

### **5. Transition Services**

IDEA requires that the IEP team consider, for a child who is 14 or older, her vocational and advanced-placement needs and courses, and any involvement with noneducational agencies that provide vocational and other support services for individuals with disabilities (20 U.S.C. §1414(d)(1) (A)(vii); 34 C.F.R. §300.347(b)).

### **6. Due Process**

Due process refers to your specific right to take any dispute you have with your child's school district -- whether a disagreement about an assessment, eligibility or any part of the IEP, including the specific placement and related services -- to a neutral third party to

help you resolve your dispute. These rights are unique; parents of children who are not in special education do not have them (20 U.S.C. §1415; 34 C.F.R. §§300.500-517).

If you have a disagreement, you can go to mediation and a due process or "fair hearing." Mediation is the process where you and the school district meet with a neutral third party who helps you come to an agreement. The mediator has the power of persuasion, but no authority to impose a decision on you. If you cannot reach an agreement in mediation (or prefer to skip mediation altogether), you can request a fair hearing, in which you and the school district present written and oral testimony about the disputed issues before a neutral administrative judge, who will decide who is right and issue an order imposing a decision. If you or the school district disagree with the decision, you can appeal to a federal or state court, all the way to the U.S. Supreme Court if necessary.

### **More Information: Individuals with Disabilities Education Act**

For more information on IDEA and special education law, contact the following organizations:

Your local school district. The district is required by the IDEA to provide you with a copy of federal and state statutes and regulations and any relevant policies. Be sure to request this information, along with the school district's IEP form and any parent guide that's available. U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS). For information on the IDEA and special education law, visit OSERS at <http://www.ed.gov/offices/OSERS>. Your state department of education. The federal IDEA is binding on all states. The federal government provides financial assistance to the states, which are responsible for making sure the local school districts comply with the IDEA. Most states have laws that generally parallel IDEA. States can provide children with more, not fewer, protections than IDEA does. For more information on state special education laws and regulations, contact your state department of education. Your school district can give you the appropriate office to contact.

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