



What Parents Need to Know about Special Education Rights

This post was authored by Marion M. Walsh, Esq., a partner with [Littman Krooks LLP](#), which has offices in White Plains and New York City. She has worked in education law for over 20 years and leads the special education department at Littman Krooks. She is certified by the New York State Education Department as an impartial hearing officer for children with disabilities.

What Parents Need to Know about Special Education Rights

Many parents, at some point, may wonder if their child has a learning or emotional disability or special needs. Some parents know about the child's challenges at birth or in early childhood. Others may not suspect a disability until a child is an adolescent or even a young adult, as some complex and invisible challenges, such as emotional disabilities, become pronounced in adolescence. Special education law covers a broad continuum of students. The Individuals with Disabilities Education Act (IDEA) requires that every public school district in the U.S. identify and evaluate students suspected of having a disability and provide a free, appropriate public education (FAPE) to every eligible student until graduation or the year after the individual turns 21.

Steps to Take if You Suspect Your Child Has a Disability

If you suspect that your child has a disability affecting their education, you can refer them to your school district for special education services. Even if a parent does not refer a child, a school district has the affirmative obligation to conduct evaluations of students suspected of needing special education or related services. This "child find" obligation extends to children who may be advancing from grade to grade.

It is important for parents to know that school districts and parents often view children's progress through a very different lens. Districts, in general, may tend to underestimate student needs, as districts face counter-pressure to not overclassify students.

A strong psycho-educational evaluation for a student is critical. Instead of relying on school district evaluations, parents may obtain private evaluations and present them to the school district. If you disagree with a school district evaluation and provide appropriate notice and a request, a public school district must, subject to certain limitations, provide an independent educational evaluation at public expense.

What Disabilities Are Covered?

Under the IDEA, disability categories include: autism, deaf-blindness, deafness, an emotional disturbance, a hearing impairment, an intellectual disability (formerly known as “MR”), multiple disabilities, other health impairment (which can include ADHD), an orthopedic impairment, speech/language impairment, a specific learning disability, traumatic brain injury, or a visual impairment. Remember, a diagnosis alone is not enough. The school district must find that the disability has an education impact and that the student needs special education and related services.

What Is an IEP?

Once a child is evaluated, a team of special education professionals must meet to decide if the child meets the criteria to receive special education services. This team then must develop an Individualized Education Program (IEP). An IEP represents the “centerpiece of the IDEA” and is a written statement outlining a plan for providing the free appropriate public education to which the child is entitled.

The IEP must include the student’s present levels of academic achievement and functional performance, and detail academic, physical, management and social emotional needs. It must contain an annual goal for every special education need identified. Of course, the IEP must include the special education program and services, as well as any accommodations, including those for testing. The continuum of services can range from general education (with related services) up to a restrictive residential placement.

What Constitutes a Free Appropriate Public Education?

To provide a FAPE, a district must provide the special education and related services outlined in the IEP. The district must adhere to all substantive and procedural requirements of the IDEA.

How do you measure a FAPE? The U.S. Supreme Court held in 2017, in a case known as “*Endrew F.*,” that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Court rejected the position that anything more than “*de minimis*,” or minimal, progress is acceptable. Rather, a child’s “educational program must be appropriately ambitious in light of his circumstances.” Advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The Court emphasized that the goals may differ, but every child should have the chance to meet challenging objectives. Many parent advocates are using this important precedent to advocate for higher standards in special education.

What Are Transition Services?

An IEP must also contain transition services and goals, which are absolutely essential for helping children with disabilities attain independent living. The IDEA requires that IEPs begin addressing transition no later than age 16. Some states and IEP teams begin earlier. The IEP must include contain transitional goals and services which will facilitate movement from school to post-secondary activities.

What Are Some Parental Remedies?

The law gives parents specific rights under the IDEA concerning participation in the special education process and on notification and consent.. Parents have the right to seek and review all of their child's educational records, and school districts have the obligation to keep such records confidential.

If parents disagree with a school district IEP decision, they have the right to file for due process. This means that a school district must conduct a hearing before an impartial hearing officer, appointed through the state. While the hearing may take a single day, some last for many months. Either side can appeal to state or federal court.

Parents have the right to seek various remedies in an impartial hearing, including compensatory or made-up services. They cannot seek money damages but may be able to recover reimbursement for certain evaluations or services that a school district should have covered. Under the IDEA, parents have the right to unilaterally place child in a private school and seek tuition reimbursement. Parents have the burden to show the private school is appropriate under the IDEA and must show that they cooperated with the District.

What Happens When A Child Graduates or Turns 21?

After your child graduates with a regular education diploma or turns 21 or 22, depending on the state, the protections of the IDEA end. Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Education Act, do still protect the young adult from discrimination. These laws apply to colleges that receive federal funds, most employers and places of public accommodation. Your state will administer additional programs for young people with developmental disabilities. However, the laws do not require a FAPE or services to the extent of the IDEA. This is why special education advocacy up to age 21 is so important.

If you have questions about whether your child is being appropriately served or needs an IEP, it is a good idea to consult with a special education attorney in your state. The [Council for Parent Advocates and Attorneys \(COPAA\)](#) can provide a list of experienced professionals.

About this Article: *We hope you find this article informative, but it is not legal advice. You should consult your own attorney, who can review your specific situation and account for variations in state law and local practices. Laws and regulations are constantly changing, so the longer it has been since an article was written, the greater the likelihood that the article might be out of date. SNA members focus on this complex, evolving area of law. To locate a member in your state, visit [Find an Attorney](#).*

Requirements for Reproducing this Article: *The above article may be reprinted only if it appears unmodified, including both the author description above the title and the “About this Article” paragraph immediately following the article, accompanied by the following statement: “Reprinted with permission of the Special Needs Alliance – www.specialneedsalliance.org.” The article may not be reproduced online. Instead, references to it should link to it on the SNA website.*