

# Understanding Special Education Laws and Rights

## Frequently Asked Questions

Even though parents receive a copy of special education rights and responsibilities at least once a year, often there is confusion about interpretation. Here are some recurring questions and answers about the protections offered under Individuals with Disabilities Education Act (IDEA).

### What is FAPE?

Individuals with Disabilities Education Act (IDEA) and its regulations require school districts to provide a free appropriate public education (FAPE) to meet the unique needs of a child with a disability. FAPE refers to special education and related services that are provided at no cost to the parent, meet state education standards, and are consistent with your child's IEP. Eligible students, aged 3 to 21 (in most states) or until they graduate from high school with a regular diploma, have a right to FAPE.

FAPE doesn't mean the best possible education is offered at public expense to your child. Courts have defined "appropriate education" as a basic floor of opportunity. In other words, while IDEA guarantees equal opportunity, it does not guarantee a specific level of achievement or even a regular high school diploma.

When you and the school disagree on the meaning of "appropriate," communication becomes extremely important. Because appropriate is based on your child's IEP and the progress she's made, FAPE is determined on an individual basis. When making this decision, the following will be considered: growth on standardized tests from year to year, classroom performance, attendance, behavior, progress on goals and objectives, and report card grades.

For example, imagine your child with LD has made year for year progress on tests and achieved her IEP goals and objectives but got a D on his/her report card. If s/he received the low grade because s/he skipped classes and didn't turn in homework, then his/her disability may not have been the cause of the poor grade. So it's quite possible s/he has received FAPE.

### Aren't all kids with LD entitled to FAPE?

To be eligible, a child with a disability must meet one of the 13 (and in some states more) eligibility criteria and because of the disability need special education services to benefit from the general education program. If the IEP team decides your child meets these two requirements, then an IEP is developed.

Even though the team, which includes you as parent, agrees your child has a disability, if she doesn't require special education services, then s/he is not eligible and has no legal entitlement to FAPE.

### What does LRE mean?

Federal special education laws and regulations require FAPE to be provided in the least restrictive environment (LRE). Since LRE is a relative concept, what is considered LRE for one child may not be LRE for another.

The IEP team must consider how to educate your child alongside kids without a disability to the maximum extent appropriate for both. The IEP team identifies the services your child needs to reach his/her goals and objectives and how they'll be provided.

Since special education is a set of services, rather than a specific place for your child to go, the general education classroom is considered the LRE for most kids. That means your child spends most of his/her school day in general education with "push in" or "pull out" support from the special education staff. In other words, your child's IEP may be implemented in the general education classroom or in a different classroom.

IDEA also requires that a range of placements be available. Besides instruction in general education, other options for receiving special education services may be considered, including special classes, special schools, home instruction, and instruction in hospitals and institutions. Considering all IEP components, the IEP team must decide which one of these settings is the LRE for your child.

### **How can I get the district to pay for private school?**

As a parent, you want the best for your child, to maximize his/her potential. However, since there's no "cure" for LD, your child may struggle throughout school and progress at a different rate from his/her peers. The effect of a learning difference on a child's rate of learning, coupled with high parental expectations, can cause a child to feel pressured and home-school relations to be strained.

When communication breaks down, you may feel the public school isn't doing enough or the teachers just don't understand your child. That may lead to disagreement over your child's rate of learning and what s/he's entitled to. The frustration that results may lead you to consider other alternatives, including private school.

While it may sound good to you to have your child educated in a school in which all the other kids have LD, be aware that such a private school legally may be considered a more restrictive environment because s/he'll have little, if any, access to nondisabled peers. In other words, your child will be educated only with kids who are considered to have a disability. Therefore, the setting may not be considered the LRE because there's no opportunity to work and play with nondisabled kids.

In order to get placement in a private school at public expense, you'll need to show your child was denied FAPE. In 1982, the Supreme Court of the United States set the standard that a child must receive "meaningful" (more than "trivial") benefit from his/her education. Public schools are expected to provide some benefit, not maximize your child's potential or offer the best services available. This has been referred to as the requirement to "provide a Chevrolet, not a Cadillac" education. In other words, school districts have to provide basic services — access to general education curriculum — within a clearly stated budget that comes from public tax dollars.

Deciding how much benefit your child has received from school can be difficult because you and the school may have different standards and expectations. The outcome of a case heard before the 5th Circuit (affecting Louisiana, Mississippi, and Texas) in 1997 encouraged a look at these questions to decide if your child's IEP is

“reasonably calculated to provide educational benefit”:

- \* Is his/her program individualized on the basis of her assessments and performance levels?
- \* Is s/he receiving her program in the LRE?
- \* Are services provided in a coordinated and collaborative manner?
- \* Are positive academic and nonacademic benefits demonstrated?

To evaluate educational benefit from year to year, compare your child’s individual and group standardized test scores; class papers, projects, and tests; report card grades; and progress on IEP goals and objectives. Also consider his/her social skills, behavior, attendance, study skills, and work habits and how they may affect his/her classroom performance. Do regular reports keep you informed of progress at school? If you decide to pursue legal recourse, these will all be taken into consideration in deciding whether your child has received educational benefit or has been denied FAPE.

Of course, parents always have the right to enroll their child in a private school at their own expense. Some independent schools may offer partial scholarships or other financial assistance.

### **Why won’t the school use the teaching method I want?**

As a parent, you may have heard of a specific methodology that sounds just perfect for your child. Perhaps a friend gave a testimonial or you saw an advertisement about a certain program. But the school turned you down when you asked them to use this method to teach your child.

Generally, this is because courts have given schools the authority to choose the methodology for educating children with IEPs. If your child is making progress in school, then the teaching methods being used are considered to be appropriate.

If you can show that your child has not received FAPE, then the district may have to consider using the methodology you favor. But you’ll probably need to have independent assessment data showing your child is not receiving educational benefit and recommending the specific methodology.

### **When is the district required to provide an IEE?**

By definition, an independent educational evaluation (IEE) is conducted by a qualified professional who is not an employee of the school district. Parents may request an IEE paid for by the school district when they disagree with the school district’s special education evaluation. In other words, these steps are necessary prior to asking for an IEE:

- \* You agree in writing to allow district staff to assess your child.
- \* Results of the assessment(s) are reported to you.
- \* You disagree with those results.

In response to your request for an IEE, the district must take one of two actions:

- \* Provide the IEE at public expense, or
- \* Initiate a due process hearing to show the district’s evaluation was appropriate.

In the first situation, if the school district agrees to provide an IEE at no cost to you, they may do so in a variety of ways, e.g., give you names of individuals who are qualified to assess, suggest a state-supported agency (such as a diagnostic school), or even arrange to have an employee of another school district do the evaluation. In any case, certain conditions, qualifications of evaluators, and standards spelled out in IDEA must be met. If the district agrees to provide an IEE at public expense, it doesn't necessarily mean they will pay for an assessment by a professional whom you heard about from friends or one linked to a specific methodology or program.

In the second instance, the district requests a due process hearing to show its assessment followed standards for evaluation and was conducted by qualified individuals. The Hearing Officer has an option to order an independent evaluation. However, after hearing testimony from both sides and reviewing records, if he decides the district's evaluation was appropriate, then the district does not need to pay for an IEE.

Parents always have the option of obtaining an independent evaluation at their own expense. The school district is obligated to consider the results of such an assessment at an IEP meeting. However, giving consideration to the report doesn't mean the school has to agree with the results or accept the recommendations made by the professional who did the assessment. Often there may be agreement or overlap between school and independent evaluation, and this should be pointed out to you. If the school does use new information from the IEE to develop your child's IEP, they may be responsible to reimburse you for a part or all of the evaluation cost.

### **Should I consider filing for due process?**

If you feel you're at an impasse with the school district, you may think about your right to due process. Usually it's wise to consult with a trained advocate or attorney knowledgeable about special education law to help you evaluate the case before filing for due process.

Are there any other steps you could take first? Is your case based on facts or on feelings and frustrations? What are you trying to achieve for your child? Are these goals realistic? Do you want to commit the time, energy, and expense to go forward?

To make these decisions, a thorough review of all of your child's records is important. You may already have copies of this information, but if not, you can ask the school district to review and/or provide copies of your child's educational records. However, if the school makes copies for you, there may be a charge.

If you decide to proceed with mediation and/or an administrative hearing, be prepared for a somewhat demanding process. After a lengthy procedure of reaching a settlement with the school district, one dad commented that he'd rather have a root canal than participate in due process again!

Most states have some form of mediation, generally viewed as a "win-win" strategy, available. After you and the district have each presented your side, a trained mediator will help you reach agreement — generally some sort of compromise. By prioritizing objectives ahead of time, you'll be able to focus on what's really important for your child. Each side may have to give a little, but you'll both have

control over the final decision because it has to be mutually agreed upon by you and the district.

An administrative or “fair” hearing resembles a court proceeding. One at a time, you and the school district will be asked to present your side of the case to an Independent Hearing Officer (IHO), often an attorney trained in special education law. There are specific rules to follow regarding inclusion of written documents, testimony and cross-examination of witnesses, and other procedures. Because the final decision is made by the IHO on points of law, not emotion, it’s usually best for you to be represented by an attorney.

The process can last much longer than the 45-day timeline — often 90 to 200 days — because of delays related to getting additional assessments and finding mutually convenient times for lawyers. The cost can run into the thousands of dollars per day for attorney fees and experts. If the IHO rules in your favor, you may recover some or all of the fees you’ve paid. However, if the IHO rules in favor of the district, you are responsible to pay your own costs. And remember, in either decision, the school district pays for its attorney and experts and that money comes from the general fund — monies which are used to provide for all children in the school district.

The result of many cases is that parents prevail on some issues and the school district on others, so that neither wins the case on all points presented. The decision can leave both parties dissatisfied with the outcome. So before deciding to go to a hearing, you may want to try one more time to communicate your concerns about your child’s special education program with school district personnel.

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