

# Your Rights under the IDEA

The following information is a detailed statement of parental rights under the Individuals with Disabilities Education Act ([IDEA](#)). In the interest of simplicity, some of the rights have been paraphrased.

## NOTICE

As a parent you have a right to -

- be notified in writing a reasonable time before the public agency -
  1. proposes to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child; or
  2. refuses to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child.
- a description of the action proposed or refused by the public agency with an explanation of why it is recommended, what other options were considered and why those options were ruled out.
- a description of each evaluation procedure, test, record or report the public agency used as the basis for any decision regarding your child.
- be informed of any other relevant factors that the public agency considered in its decision.
- receive a notice that is written in language understandable to the general public.
- be provided notice in your native language or other mode of communication used by you, unless it is clearly not feasible to do so.
- be informed of sources to contact to obtain assistance in understanding your rights.

If there are parents whose native language or other mode of communication is not written language, the public agency must see that -

- the notice is explained to them orally or in a mode of communication they understand;
- that they understand the information they have been given; and
- that there is written evidence that these requirements have been met.

The notice you receive must also include a full explanation of all of the procedural safeguards available to you, as contained in this document.

## CONSENT

Your written consent is required before the public agency can -

- conduct an initial evaluation of your child;
- place your child in special education and related services for the first time;
- conduct a reevaluation of your child.

Before your consent is given, the public agency must explain in your native language, or other mode of communication, what you are agreeing to.

The public agency must be sure that you understand and agree in writing to carrying out of the activity which requires your consent. The consent form must describe what you are agreeing to, list which of your child's records (if any) will be released and specify who will receive them.

Your consent is to be given freely, and you may withdraw it at any time.

Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to you or your child.

If you refuse to give your consent for the initial evaluation, the public agency may continue to pursue an evaluation through mediation and due process hearing procedures, except to the extent inconsistent with State law relating to parental consent.

Regarding reevaluation, if the public agency can demonstrate that it has taken reasonable measures to obtain your consent and you failed to respond the public agency may move forward with reevaluation of your child.

## **EVALUATION AND PLACEMENT**

Before a child is placed in special education services, a full and individual initial evaluation of the child must be conducted. This evaluation must consist of procedures to determine whether a child is a child with a disability and to determine the educational needs of the child. In this evaluation process your child has a right to:

- be tested in such a manner that results are not affected by race or culture;
- be tested in his/her native language or other mode of communication, unless it is not clearly feasible to do so;
- be tested with validated tests used in a manner consistent with their purpose;
- be tested by trained personnel in accordance with test instructions;
- be tested with procedures in accordance with any instructions provided by the producer of such tests;
- have tests selected and administered in a way that ensures that when a test is given to a child with impaired sensory, manual or speaking skills, it measures the child's ability ☐ or what the child has learned and not the degree of impairment (unless, of course, measuring impairment is the purpose of the test);
- have his or her educational program determined on the basis of more than one test or procedure;

- be evaluated by a group of knowledgeable persons, including at least one teacher or specialist who is knowledgeable about the kind of problem your child is thought to have;
- be tested in all areas related to his or her suspected problem;
- be evaluated with a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by you, that may assist in determining whether he/she is a child with a disability and in determining his/her educational needs. This includes information related to enabling him/her to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;
- be evaluated with technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

When looking at evaluation results and deciding on the placement for your child, the public agency must:

- collect information from many sources;
- ensure that this information is documented and carefully considered;
- provide you with a copy of the evaluation report and documentation of determination of eligibility;
- ensure that the placement decision is made by a group of persons, including you and others who know about your child, who can interpret the evaluation results and who know about placement options;
- ensure that your child shall not be determined to be a child with a disability if it is based on a lack of instruction in reading and math or limited English proficiency;
- ensure that the placement decision is made in such a way that your child's education will be provided in the least restrictive environment according to established guidelines.

If it is determined that your child is disabled and is in need of special education and related services, an IEP must be developed according to established guidelines.

## **REEVALUATION**

Each public agency shall ensure:

- that the individualized education program (IEP) for each child with a disability is reviewed annually according to established guidelines;
- that the IEP team and other qualified professionals, as appropriate,
  1. shall review existing evaluation data on your child, including evaluations and information provided by you, current classroom-based assessments and observations, and observations by teacher and related services providers; and
  2. on the basis of that review and input from you, identify what additional data, if any, are needed to determine if your child continues to have such a disability; the present

levels of performance and educational needs of your child; whether your child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable your child to meet the measurable annual goals set out in your child's IEP and to participate, as appropriate, in the general curriculum.

## **INDEPENDENT EDUCATIONAL EVALUATION**

If you do not agree with the evaluation provided by the public agency -- that is, if you don't think that the right tests were given or the right conclusions were reached -- you may obtain an independent educational evaluation.

The public agency must provide you, upon your request, information about where an independent educational evaluation may be obtained.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for your child's education.

"Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with guidelines on methods and payments for provision of free appropriate public education.

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency has a right to initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

If you have an independent educational evaluation conducted at your own expense, the results of this evaluation:

- must be considered by the public agency in any decision regarding your child's education; and
- may be presented as evidence at a formal hearing.

If an independent educational evaluation is requested by a hearing officer as part of a "due process hearing," the evaluation must be at public expense.

Independent educational evaluations conducted at public expense must meet the same criteria (qualifications of examiner, etc.) as those conducted by the public agency.

## **RECORDS**

You have a right to:

- examine all records relating to your child and to participate in meetings with respect to the identification, evaluation, and educational placement of your child and the provision of a free appropriate public education to your child, and to obtain an independent educational evaluation of your child. The public agency must comply with your request to review records without unnecessary delay and before any meeting or hearing, within 45 days after the request has been made;
- have someone at the public agency explain or interpret any item in your child's records upon reasonable request;
- receive copies of the records if this is the only way to ensure that you will be able to review and inspect them;
- have a representative inspect and review the records.

The public agency may presume that you have the authority to inspect and review your child's records unless it has been advised that you do not have this right under State law governing such matters as guardianship, separation and divorce.

You have a right to receive, upon request, a list of the types and locations of education records collected, maintained or used by the public agency.

A participating public agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

A participating public agency may not charge a fee to search for or to retrieve the information.

If you feel that any information in your child's education records is wrong or misleading, or violates the privacy or other rights of the child, you may ask the participating public agency to change it.

The participating public agency must either change such statements in a reasonable period of time or formally refuse to do so.

If it refuses, the public agency must inform you of its refusal and advise you of your right to a hearing to challenge information in the child's education record.

If you request such a hearing, the public agency must conduct one on the matter.

If the hearing is decided in your favor, the public agency must change the information and inform you in writing that it has done so. If, as a request of the hearing, the public agency's information is held to be accurate, you have the right to add a statement to the record commenting on the information or setting forth any reasons for disagreeing with the agency's decision.

Your statement placed in your child's records must:

- be kept as long as the contested part of the overall record is kept; and

- be disclosed along with the contested portion of the records to any party to whom the agency released the records.

The hearing described herein does not necessarily follow the process described in the "Hearings" section of this explanation of your rights. The hearing may be conducted by any official of the public agency who does not have a direct interest in its outcome, and must be conducted according to procedures under the Family Educational Rights and Privacy Act (FERPA).

## **CONFIDENTIALITY OF INFORMATION**

States are required to have procedures to identify, locate and evaluate children with disabilities and to inform parents of the requirements regarding identification, location and evaluation of children with disabilities, in accordance with Part B of the IDEA. This must include:

- information as to the native language(s) in which the notice is available;
- a description of the children on whom confidential information is kept, the methods and sources used to gather various types of information and uses to be made of the information;
- a description of how this information is kept, disclosed and destroyed;
- a description of all of the rights of parents and children regarding this information.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

The public agency is responsible for protecting the confidentiality of your child's education records by:

- permitting parents to see only that information which relates to their own child when records contain information on more than one child;
- requiring your consent before your child's education records are given to anyone not involved in your child's education;
- requiring your consent before using your child's records for any purposes other than those related to providing special education and related services;
- not releasing information from education records to participating agencies without parental consent unless authorized to do so under federal law and regulation;
- adhering to state policies and procedures which apply in the event that you decline to give this consent and that the public agency feels the records should be given to the person who requested them. These procedures could allow the public agency to send copies of the records to the requesting person or agency, under certain circumstances, despite your objection;
- protecting the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages;
- assigning an individual who is responsible for ensuring the confidentiality of records;

- guaranteeing that all persons who collect or use such information receive training in the State's policies and procedures regarding confidentiality;
- keeping for public inspection a list of names and positions of those employees who are permitted access to these records;
- informing you when confidential information is no longer needed to provide educational services to the child;
- destroying the information at your request. However, a permanent record of a student's name, address and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## **LEAST RESTRICTIVE ENVIRONMENT**

The State educational agency shall ensure that each public agency establishes and implements procedures to ensure that your child has a right to:

- be educated to the maximum extent appropriate with children who are not disabled;
- be in a regular education environment unless the nature or severity of the disability is such that he or she cannot receive a satisfactory education in regular classes using additional aids and services;
- have available a variety of placements to meet the needs of children with disabilities for special education and related services;
- have a range of placements available, including instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions;
- supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Your child's educational placement must be:

- reviewed and decided upon at least annually;
- based on the IEP;
- as close to home as possible.

This range of placements must include any placement which is needed to implement the child's IEP.

Unless the IEP calls for a different placement, your child should attend the school he or she would attend if not disabled.

□ In selecting the least restrictive environment for your child, the public agency must consider any possible harmful effects that a particular placement may have on your child or on services your child is to receive.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, the public agency shall ensure that your child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to his or her needs.

It is the responsibility of the State educational agency to ensure that the general requirements governing educational placement in the least restrictive environment are implemented by public agencies by:

- making arrangements with public and private institutions to ensure that to the maximum extent appropriate, children with disabilities are educated with nondisabled children;
- ensuring that teachers and administrators are fully informed about the implications of the concept of the least restrictive environment and receive training and assistance in its application;
- ensuring that all participating public agencies in the state are carrying out these requirements. If there is evidence that a public agency is not, the Department of Education is obligated to review the public agency's justification for its actions and to see that any shortcomings are corrected.

## **HEARINGS**

You as the parent, or a public educational agency, may initiate a hearing on any matter relating to the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child.

You may request an expedited hearing if you disagree with a determination that your child's behavior was not a manifestation of his/her disability or a decision regarding his/her removal to an interim alternative educational setting following a disciplinary action.

The public educational agency may request an expedited hearing when the agency maintains that it is dangerous for your child to be in the current placement (placement prior to an interim alternative education setting) during the pendency of the due process proceedings.

All hearings must be conducted by the State educational agency in accordance with state law and regulation.

## **HEARING OFFICERS**

An impartial hearing officer will be assigned to preside over any hearing and arrive at a decision. To ensure impartiality, a hearing officer may not be:

- an employee of the State education agency or a public agency (school system, institution, etc.) which is involved in the education or care of your child;
- anyone who has a personal or professional interest which would conflict with objectivity in the hearing.

□ A person who otherwise qualifies to conduct a hearing in accordance with previously stated guidelines is not considered to be an employee of the agency simply because he or she is paid by the agency to be a hearing officer.



Each public agency must keep a list of persons who serve as hearing officers and a statement of their qualifications.

## **MEDIATION**

Parties have the right to participate in a mediation process in an attempt to resolve disputes regarding any matters previously described in the section titled "Hearings."

The mediation process is voluntary on the part of the parties and cannot be used to deny or delay your right to a hearing or any other rights under the IDEA. The mediation process is conducted by a trained, qualified and impartial mediator.

The State maintains a list of individuals who are qualified mediators.

The State bears the cost of the mediation process.

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and, in accordance with State regulations, the parties to the mediation process will be required to sign a confidentiality pledge prior to the commencement of the mediation session(s).

## **HEARING RIGHTS**

During the conduct of a hearing you, as a parent, have a right to:

- be accompanied and advised by counsel and by persons with special knowledge or training with respect to the problems of children with disabilities;
- present evidence, confront, cross-examine and compel the attendance of witnesses;
- prohibit the introduction of evidence, including all evaluations completed by the final date of disclosure and recommendations based on the offering party's evaluations that the party intends to use at the hearing that had not been revealed to either party at least five (5) business days before the hearing;
- obtain a written, or at your option, electronic verbatim record of the hearing;
- obtain a written, or at your option, electronic verbatim record of findings of fact and the decisions.

☐ You also have the right to:

- have your child who is the subject of the hearing attend the hearing if you wish;

- open the hearing to the public if you wish;
- be told by the public agency where free or low-cost legal and other relevant services are available in the area:
  1. if you request such information, or
  2. whenever you or the public agency initiate a hearing.
- have the hearing conducted at a time and place reasonably convenient to you and your child.

The decision of the hearing officer is final unless either you or the public agency chooses to appeal the decision to the appropriate court of law in accordance with the State educational agency policy and procedures and State statute.

The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing, or in the case of a request for an expedited hearing not later than 20 days:

- a final decision is reached in the hearing; and
- a copy of the decision is mailed to each of the parties.

The hearing officer may grant an extension to the time period at the request of either party to the hearing.

## **APPEALS**

Any party aggrieved by the findings and decision made in a hearing has the right to bring a civil action in either Federal district court under section 615 (I)(2) of the Individuals with Disabilities Education Act or in a state court of competent jurisdiction in accordance with Arkansas Code Annotated 6-41-216, within three (3) years after the date on which the hearing officer's final decision is rendered in the hearing, without regard to the amount in controversy.

Except for hearings related to disciplinary matters, during the time that the hearing and appeals process is taking place, your child is to remain in his or her present educational placement, unless you and the public agency agree otherwise.

If the dispute concerns the initial admission of your child to public school, then he or she, with your consent, will be placed in a public school program until the completion of the proceedings.

When you request a hearing regarding a disciplinary action which will change your child's placement or to challenge the interim alternative educational setting or manifestation determination decision, your child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 day time period, whichever occurs first, unless you and the public agency agree otherwise.

## **§SURROGATE PARENTS**

Each public agency must ensure that the rights of a child are protected when:

- the parents of the child are not known;
- the agency, after reasonable efforts, cannot locate the parent; or
- the child is a ward of the state.

**A surrogate parent must be appointed when any of the above situations exists, however, a person assigned to act as a surrogate for the parents may not be an employee of the State education agency, the local education agency, on any other agency that is involved in the education or care of the child.**

It is the public agency's duty to assign an individual to act as a surrogate (stand-in) for the parents.

This must include:

- a method for determining whether a child needs a surrogate parent; and
- a method for assigning a surrogate parent to the child.

The public agency may select a surrogate parent in any way permitted under State law.

The public agency shall ensure that a person selected as a surrogate:

- does not have a conflict of interest; and
- is qualified to represent the child.

A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

A person who otherwise qualifies to be a surrogate parent in accordance with previously stated guidelines is not an employee of the agency simply because he or she may be compensated by the agency to serve as a surrogate parent.

The surrogate may represent the child in all matters relating to identification, evaluation, placement and the provision of a free appropriate public education.

## **ATTORNEY'S FEES**

In any action or proceeding, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardians of a child or youth with a disability who is the prevailing party.

## **COMPLAINT PROCEDURES OF THE STATE**

Each public agency shall provide to parents a copy of the "Complaint Procedures of the State" in compliance with Part B of the IDEA.

## **□TRANSFER OF PARENTAL RIGHTS TO THE STUDENT AT AGE OF MAJORITY**

When your child with a disability reaches the age of majority under State law (which is 18 in Arkansas), unless your child has been determined to be incompetent under State law:

- all rights, other than the right to receive notice, accorded to you under the IDEA transfer to your child;
- the public agency shall provide notice to both you and your child of the transfer of rights; however;
- you will continue to be provided any notice required under the IDEA.

All rights accorded to parents under Part B transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

## **PLACEMENT OF CHILDREN IN PRIVATE SCHOOLS BY PARENTS**

Upon notification by you, as the parent of a child with a disability, of your intent to place your child in a private school, the public agency shall provide you with written information regarding payment for education of children enrolled in private school without consent of or referral by the public agency. This information contains limitations on your reimbursement for private school placement which may apply if you, as the parent of a child with a disability, elect to place your child in a private school, without prior notice to the school.