



**SPECIAL EDUCATION LAWS
AND
THE SCHOOL ENVIRONMENT:**

A Guide to Understanding Your Rights as a Parent

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the School Environment:**

A Condensed Guide to

Understanding

Your Rights as a Parent

The Texas Young Lawyers Association



BE AN UNCOMMON LEADER.®

If you are reading this handbook, you are most likely a parent of a child who has been diagnosed, or you believe should be diagnosed, with a “disability.” You may be asking yourself, “What can I do?” And, “What is the school supposed to do?” This handbook is meant to be a tool to help you find the resources you need and to understand some key concepts that will make your navigation through the challenging waters of special education a little easier.

This handbook provides an introduction to: (1) the laws that affect your child’s education; (2) what you can do if you believe your school is not providing the necessary services and education for your child; (3) key phrases and words used by the schools with relation to special education; (4) your role in the diagnosis, identification, education, and ultimate success of your child; and (5) some resources available to you to understand your rights and the obligations of the school and yourself.

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I. LAWS GOVERNING SPECIAL EDUCATION

You may have heard the words, “IDEA” and “504” by now. If so, that is a good thing – you are on the right track! Although there are many laws and regulations which will govern your child’s education and services provided, these two laws are, by and large, the laws you will hear providers discuss. Although this handbook will briefly describe “504”, the majority of this handbook deals with IDEA.

A. IDEA

IDEA, the Individuals with Disabilities Education Act, is a federal law.¹ This means that no matter what state you are in, IDEA will govern the education of your child when he or she meets the listed criteria. The law has been around since the 1970’s and has been revised several times, the latest being in 2004. To look for the latest regulations, make sure you are reading information that refers to the “IDEA 2004” laws. This handbook will highlight some of IDEA’s key elements. For a better understanding of IDEA, please see the end of this handbook for resources that you may find helpful.

To qualify under IDEA, your school-age child has to be identified as having a particular “disability.” These “disabilities” are:

- (1) mental retardation;
- (2) a speech or language impairment;
- (3) a visual impairment (including blindness);
- (4) a serious emotional disturbance (referred to in this part as “emotional disturbance”);
- (5) hearing impairment (including deafness);
- (6) an orthopedic impairment;
- (7) autism;
- (8) traumatic brain injury;
- (9) another health impairment;
- (10) a specific learning disability;
- (11) deaf-blindness; or
- (12) multiple disabilities.²

1 Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1221e-3, 1411-1419, 1400 *et. al.*; 30 C.F.R. 300 *et. al.*; 71 FR 46753, Aug. 14, 2006.

2 20 U.S.C. Sec. 1401 (a)(1)(A); 30 C.F.R. 300.8(a)(1).

Your child must also, because of the disability, need special education and related services.³

For infants and toddlers with a disability, he or she must:

Need early intervention services because the individual is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.⁴

There are several other listed infants and toddlers who may qualify as well. For a three to five year old child to qualify under IDEA, he or she must:

Experience developmental delays, as defined by the State and as measured by the appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and who, by reason thereof, needs special education and related services.⁵
(emphasis added)

Within IDEA, there are key phrases and acronyms that you will hear used in meetings with teachers and special education providers. These buzz words should catch your attention because they provide a basic understanding of the rights and responsibilities of you and your child's school. Therefore, these phrases and key words will be broken down and discussed in Section II below: "FAPE", "IEP", "ARD", "BIP", "informed consent" and "due process."

B. Anti-Discrimination: The Rehabilitation Act, Section 504

If your child does not qualify for services under IDEA as outlined above, a school may mention that your child may receive services under "504." It is important to distinguish the two laws – IDEA is a special education law, and 504 is an anti-discrimination law. The Rehabilitation Act, Section 504, is a civil rights law that

3 *Id.*

4 30 C.F.R. 300.25.

5 20 U.S.C. Sec. 1401(a)(1) (B); 30 C.F.R. 300.8(b).

prohibits discrimination against individuals with disabilities.⁶ This section of the Rehabilitation Code ensures that a child with a disability has equal access to an education. Section 504 is often referred to as a catch-all anti-discrimination provision that may act as an “umbrella” to identify your child and allow services to be provided. If a child does not meet the specific criteria listed under IDEA, Section 504 may allow services to be provided for those children with “handicaps” that “substantially” impair “major life activities”.

Under Section 504, a person is “handicapped” if they are a person who:

- (i) has a physical or mental impairment which substantially limits one or more major life activities,
- (ii) has a record of such an impairment, or
- (iii) is regarded as having such an impairment.”⁷

A “physical or mental impairment” is further defined as:

- (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
- (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”⁸

A major life activity includes “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”⁹

Although there are many procedural similarities between Section 504 and IDEA, this handbook is meant to deal with those procedures which govern IDEA and not Section 504. If your child qualifies for services only under 504, please refer to the back of this booklet for other resources you may find helpful.

6 34 C.F.R. Sec. 104 et. al..

7 34 C.F.R. Sec.104.3(j)(1).

8 *Id.* at 104.3(j)(2)(i).

9 *Id.* at 104.3(j)(2)(ii).

II. DEFINITIONS AND KEY PHRASES OF IDEA – THE FIRST STEP TO UNDERSTANDING SPECIAL EDUCATION

A. How Your Child is Identified and Classified

1. The Parent's Role

In order to receive special education and related services, your child will have to be identified, or “labeled”, with a special education disability under IDEA. As a parent, you know your child better than anyone else. At any point during your child’s life before the age of 18, and under most circumstances the age of 21, you have the right to request that your child be tested to see if a disability is present that requires the need for intervention, special services, and/or an individualized education plan.¹⁰ The school also has a duty, called Child Find, to locate and evaluate children who live in the school district who may have a disability and who, because of the disability, need special education and related services. So the school may ask you if it can test your child if the school suspects an IDEA disability.

Services are available even for very young children, so if you suspect that your child may have a disability, you need not wait until they are in school to request testing. In Texas, a child two years of age or younger may qualify for a program known as the Early Childhood Intervention program (“ECI”). If your child qualifies, services will be provided as needed to your child and your family. Once the child turns three, services from ECI may be transferred, if necessary, to special education programs.

There are also programs, such as Head Start, that your child may qualify for beginning at age three. If a child is properly diagnosed at an early age, depending on the type of disability, early intervention can be beneficial and critical to the long-term success of the child.

Sometimes you may not realize that your child may need special education services until they enter the school system. At that time, “red flags” may arise such as their performance in school or a change in their behavior. Remember that you have the right to request the testing of your child by a school official at any point. The school may also employ the services of an outside professional to conduct the testing. You should always put your request for testing to the school in writing.

¹⁰ 30 C.F.R. 300.101-102.

2. Identifying Your Child

The first test of your child is commonly referred to as a Full and Individual Evaluation (“FIE”). This evaluation must be completed within sixty (60) days from parental consent.¹¹ Generally, there are several team members involved in providing this evaluation. Many factors are included in this evaluation, including your observations as a parent.

You will be a key player in this process, and your input as to your observations and concerns regarding your child’s developmental, educational, physical, and social needs will be an important part of the assessment of your child, so share them with the evaluator. If you have a pediatrician or other treating specialist who has made recommendations, be sure to get these in writing and provide copies of these documents to the school as another source for the school to consider.¹² The school may request that you sign a release of information that will allow the school to exchange information with your child’s private doctors and specialists.

When your child is evaluated by any school official, whether in the special education department, general education department, or otherwise, you have a right to see the results, examine the test, and ask questions.¹³ These evaluations are provided at public expense.¹⁴

The first evaluation should determine all of the individual needs of your child. These needs include not just the educational needs, but other needs such as the need for related services such as transportation, occupational therapy and physical therapy, the need for an aide, etc. After the first evaluation on which placement in special education is based, the school must re-evaluate the student at a minimum of every three (3) years.¹⁵ If a need arises in the interim, anyone, including a parent, can ask the school to re-evaluate the child. This request should be granted if the parent can show a need for the evaluation or a teacher determines a need.¹⁶ The school may determine new and different evaluations are needed to appropriately provide for the child’s educational needs.

11 20 U.S.C. Sec. 1414 (a)(I)(C)(i)(I); 30 C.F.R. 300.301(c)(1).

12 30 C.F.R. 300.305.

13 TEX. EDUC. CODE ANN. 26.006.

14 34 C.F.R. 300.301.

15 U.S.C. Sec. 1414(a)(2)(B).

16 U.S.C. Sec. 1414(a)(2)(A).

A school may refuse to perform an FIE if it does not suspect a disability.¹⁷ The school must put their refusal in writing with their stated reasons. To dispute their findings, the law allows you to file for a Due Process Hearing through the Texas Education Agency (“TEA”), an option explained in Section III below.¹⁸

If you disagree with any assessment, whether it is the initial FIE or any other test, you have the right to ask for an Independent Educational Evaluation (“IEE”).¹⁹ This request should be made in writing to the school. If the school agrees, you have the right to have your child fully evaluated at the school’s expense by a private party who is not related in any way to the school district, so long as the person you choose has the proper training and credentials. Most school districts have guidelines for IEEs, and the person you choose must meet the guidelines or the school district will not be required to pay for the IEE. Results from this evaluation will be provided to the school as well as to you. The school will then be obligated to consider the recommendations from the IEE as it determines the appropriate course of action. Please see Section III below should you disagree with the school’s action after an IEE is completed.

A school may refuse to fund an IEE, but to do so it must request a Due Process Hearing to defend the school’s FIE and receive a determination from the Hearing Officer that the school is not obligated to pay for an IEE. If this occurs, you may still obtain a private evaluation at your own expense and the school must consider the evaluation if you provide it to the school.

B. Key Phrases You Need To Know and Understand

1. FAPE – Free Appropriate Public Education

This is one of the most important phrases you need to understand. Each word plays a significant role in the special education process.

a. Free

First, “free” means that a child with a special education disability is entitled to a free education. Along with the education, there are free “related services” which may include, but are not limited to, transportation, hearing devices, adaptive technology, speech therapy, and many other programs and services.²⁰ If the school determines your child requires these or related services, you should not be told “you will have to

17 30 C.F.R. 503(b).

18 *Id.*

19 34 C.F.R. 300.502.

20 20 U.S.C. 1401(9); 30 C.F.R. 300.17, 300.103 et. al.

pay for this yourself.” The school must provide the resources necessary to implement the services the ARD committee determines are appropriate for your child.

b. Appropriate

The second word is “appropriate.” Appropriate is a critical component of special education. Whatever education your child receives, it has to be appropriate to your child. Every child is different and learns in a different way. Your school should assess your child’s needs and determine the appropriate education plan, textbook, adaptations, services, etc. that will meet your child’s needs. As an example, the school should know that not all children with a certain disability learn one way and get one curriculum, i.e., just because two children are autistic doesn’t mean they learn the same way and need the same curriculum.

What is “appropriate”? When analyzing whether a child has received an “appropriate” education, courts look at several factors including whether the school followed the requirements of the child’s Individual Education Plan (“IEP”) and whether the school has provided some educational benefit.²¹ Under the law, a school is not required to provide the best education; courts often use the analogy that a child is entitled to a “Chevrolet” education not a “Cadillac” education.²² If an education is “appropriate”, the hope is that a child will ultimately master the goals set out instead of continually “progressing” toward the goals.

The law requires that the school first consider placing your child in a general education classroom. You may hear the phrase “inclusion” used to describe placement of a special education student in a class of his or her typical peers. A general education classroom is considered to be the “Least Restrictive Environment” (“LRE”). In order to be successful in the LRE, students should be provided with supplementary aids and services. Children being served in the general education classroom may have a special education teacher or aide, in addition to the general education teacher, and the materials presented, textbooks, tests and/or assignments may be adapted or modified in some manner to better meet their needs. Parents who believe that their child is not being well served in the least restrictive environment should talk with the school about other ways to include the child in general education classes.

Some children may be allowed to use a “content mastery room” to complete an assignment given by the general education teacher. Others may be taught by a special

21 Bd. of Educ. of Hendrick Hudson C. Sch. Dist. v. Rowley, 485 U.S. 176 (1982).

22 Doe ex rel. Doe v. Bd. of Ed. of Tullahoma City Sch., 9 F.3d 455, 459-460 (6th Cir. 1993); Fayetteville v. Perry Sch. Dist., 20 IDELR 1289 (SEA OH 1994).

education teacher in a special education setting during a portion of the day. Alternatively, it may be determined that a child needs to be in a special education classroom or special school all day. Your child will only receive this level of services or education if it is deemed appropriate to not have your child in the regular classroom at all because of his or her individual needs.

c. Public

The third word is “public.” Your child is entitled to a publicly-funded education, which is primarily provided through the public education system.

However, your child may be entitled to a publicly-funded private education.²³ This is an option if the school determines that your child cannot receive the appropriate education in the public setting. If this happens, you will not be required to pay for the private tuition because each child is required to be given a “free” education as described above. If you believe your child needs a private placement but the school disagrees, you may request a Due Process Hearing and the hearing officer will determine whether the child can be appropriately educated in the public school.

d. Education

The last word in FAPE is “education.” This means the school must actively educate your child. Each year there must be goals set and your child’s progress assessed on a routine basis. If there is no progress, then something must change – the goal or the education process. Parents and teachers need to ensure that appropriate goals are set and are being achieved. As a parent, you have to advocate for your child throughout their school years by monitoring their progress and making sure there are appropriate changes if the child is not progressing.

2. ARD – Admission, Review and Dismissal

Once your child has received an initial evaluation and it has been determined they qualify for special education and related services, you will be asked to attend an ARD meeting. Like FAPE, you will hear this phrase over and over again. “ARD” stands for Admission, Review, and Dismissal. These meetings are required before any plan regarding your child can be implemented and are attended by (1) you (one or both of the child’s parents), (2) your child’s regular education teacher, if there is one, (3) a school administrator, (4) a special education representative, (5) a person who can interpret evaluation data to determine the child’s educational needs, and (6) anyone

23 34 C.F.R. 300.103, 148.

else who has knowledge or special expertise regarding the child.²⁴ An ARD, at the very minimum, must be held annually to review your child’s progress and develop a new IEP for the next year. An ARD meeting can be requested by you or the school at any time to discuss your child’s special education program. Generally you have a few ARDs throughout the year, in order to adequately assess your child’s progress.

You have the right to receive written notice of the ARD meeting five (5) school days before the meeting.²⁵ The notice must be in your native language, if possible, and it can be emailed if the school is able and you agree to accept the notice through an email.²⁶ When you get the written ARD notice, make sure you understand which topics will be discussed. If the notice does not list the topics, call the school to find out what will be discussed. If you have something to discuss at the ARD, put it in writing and provide a copy to the school within a reasonable amount of time before the ARD.

You also have the right to reschedule the meeting if (1) you are willing to attend and (2) cannot attend because of your schedule. If the date or time of the ARD is not convenient for you, you should make a written request to reschedule the meeting and provide it to the school. If the school attempts to set up ARD meetings and you fail to come after receiving written notice, the school may hold the ARD meeting without you and provide you written copies of what was determined.²⁷

You have the right to bring a parent advocate or attorney with you. If you do, you should provide the school written notice of your intention to do so. If you do not advise the school before the ARD meeting, the school may postpone the meeting so that it can have its attorney attend. The school always has the right to have its attorney present, just as you always have the right to have an attorney or parent advocate attend the ARD meeting with you.

You will be invited to attend many ARD meetings throughout your child’s education. However, you as a parent can also “call” an ARD when you have a concern with respect to your child’s education that cannot be resolved informally or that you would like to have documented and addressed in writing. Any changes to your child’s placement, special education, Individual Education Plan (IEP), or Behavior Intervention Plan (BIP)—which are discussed more below—must be made in writing.²⁸ When changes are not formalized either through a written agreement or by

24 34 C.F.R. 300.321.

25 TEX ADMIN CODE Sec. 89.1015.

26 U.S.C. Sec. 1415(b)(3).

27 34 C.F.R. 300.322.

28 34 C.F.R. 300.324.

action at an ARD meeting, the school will not be bound to follow the changes, even if all parties have verbally agreed to them in an informal manner.

In an ARD meeting, usually the special education teacher or the administrator will lead the discussion by going through a lengthy set of forms that address all the areas required under IDEA. They will discuss the child, his or her educational strengths and weaknesses, the disability and the need for services. They will then proceed to discuss your child's placement in the general education and/or special education classroom, along with appropriate adaptations and modifications and related services your child will need.

You are a critical member of the ARD committee and your input is critical to a child receiving an education that adequately meets his or her needs. Do not consider yourself a "nuisance" or a "bother" if you bring up various concerns or observations regarding your child's needs and/or lack of progress. You must be an advocate for your child throughout his/her education.

During the ARD meeting, feel free to bring up any evaluations you have recently had and include any physician's and therapists' evaluations. Bring copies if you can. Further, during the meeting, if you don't understand something or disagree with something, say so. Everyone who attends the ARD is supposed to ensure an appropriate plan is put in place for your child. If you disagree with something or don't understand something, no one will know and the issue cannot be addressed unless you voice your concerns.

At the end of the ARD meeting, you will be asked if you agree with what was discussed by everyone. It is extremely important that you ask any questions and raise any concerns that you might have. By signing the ARD documents, you are agreeing to the plan that defines your child's education. It is important that you and the school have a common understanding of the goals, services, and programs that relate to your child.

If you don't agree with a portion of the meeting but you agree to the other portions, you can disagree in writing with the disputed portions. Be sure to check "I Agree" to the undisputed portions on the ARD paperwork so the agreed-upon sections can go into effect immediately. If you disagree with something, you have the right to have another ARD meeting within 10 school days to discuss the disputed areas and try to come to an agreement. If there are still areas of disagreement, the school may go ahead and implement all parts of the IEP and placement after giving you 5 school days' notice. As explained in Section III below, you may challenge the

disputed portions by requesting a Due Process Hearing, in which case the school will continue your child's education without making any new changes until the hearing is resolved. You may also ask the TEA to appoint a mediator or file a complaint against the school with the TEA.

3. IEP – Individual Education Plan

The ARD Committee develops for each child a written Individual Education Plan, or "IEP", that lists out special education and related services the child needs. The written plan will include goals and how progress on the goals will be assessed. The plan will also list any accommodations in the regular classroom that your child will require and the special education services your child will receive.

An IEP must be in place prior to the start of each school year.³⁰ Therefore, you will be asked to attend an ARD meeting before the start of school (often it is in the Spring semester of the prior school year) in order to determine the individual needs of your child. Refer to this IEP throughout the year to ensure the school is following it. Do not hesitate to talk to your child's general education and special education teachers to be sure they are aware of the IEP and its contents. The school must provide you periodic reports on how your child is progressing on the IEP. You will usually get these reports at the same time grades are reported for all students.

If you believe the teacher is not implementing the IEP, first talk to the teacher to discuss the matter. If you are not satisfied, you can also contact an administrator to seek assistance. You can call an ARD to discuss what is not being done. In addition, if you feel the child's needs change during the year, you can request an ARD to determine if the IEP needs to be changed during the year to address the needs of your child.

The school must review the IEP periodically, and at least each year, unless everyone agrees this is not necessary.³¹ Your child should be making sufficient progress throughout the year to the point of "mastery" (this is one of the checkmarks on the ARD paperwork) of the majority of the goals. If not, then something is not working. If the teacher does not call an ARD, or if you are at an ARD and everyone keeps agreeing there is only "progress" and not "mastery" – speak up! This is the time to reassess and re-evaluate whether the education provided is sufficiently "appropriate" (remember FAPE) to meet your child's "individual" (remember IEP) needs.

29 34 C.F.R. 300.324(a).

30 34 C.F.R. 300.323.

31 34 C.F.R. 300.324(b).

4. BIP – Behavior Intervention Plan

A child's IEP may also contain a Behavior Intervention Plan, or "BIP", that will have a list of goals, progress points, and modifications as they relate to the child's behavior in the classroom. If your child struggles with controlling his/her behavior in the classroom setting, it will be important to focus on this document during your ARD to determine the appropriate approach for your child. The BIP will specifically target behaviors and consequences. It will be a plan on how to handle behavior and discipline matters that will most likely be different from the other children in the classroom. A BIP is as individual as an IEP.

As with the IEP, be sure to monitor carefully whether the BIP is being implemented by the school. In addition, monitor your child's discipline throughout the year. Often a behavioral plan sounds good on paper, but the plan could be unworkable in the classroom. If that happens, call an ARD and change the BIP. The teacher is bound by the BIP, so simply discussing your concerns won't ultimately change the situation. The BIP must be followed until it is formally changed in writing.

5. Informed Consent

Prior to the school making any changes that affect your child's IEP, BIP, or other resources or education plan, you must be informed of the changes and provide your consent. Thus, the term "informed consent" is a vital factor in special education. A simple phone call by the teacher will usually not be enough to rise to the level of "informed" and your simple agreement will not be "consent." In general, changes must come only after a parent is informed of the changes and consents in writing to the changes.

III. THE DISPUTE RESOLUTION PROCESS

There may be times when, despite your best efforts, you simply do not believe your child's needs are being met. If this occurs, you have several options.

A. Start by trying to resolve the problem informally.

You can consider an informal meeting, outside of an ARD setting, with the teacher, therapist(s), principal, special education director, other district administrators, and/or an advocate (such as an attorney or parent advocate), in which you discuss the problems

and see if you can reach an amicable solution. If you reach an amicable solution at this stage, have the parties agree to the changes or solution in writing. If the changes affect the IEP or BIP currently in place, be sure to hold an ARD to have the paperwork reflect the changes made.

B. Attempt to resolve the issue through an ARD

If talking directly with the teacher or others does not solve the problem, start by calling an ARD to attempt to resolve any disputes. Schools will appreciate your knowledge of the process and you will be able to evidence your willingness to work with the school at the school level. However, if an impasse is reached and you do not agree with the plan to be implemented from the ARD meeting, you do have additional options.

C. Request Mediation

Although not required by law, mediation is a great way to find a resolution to a problem. You may contact TEA and request they provide an unbiased independent mediator knowledgeable in special education laws and mediation. Mediation is different from the Complaint process in that the parties work together in an informal setting to attempt to find a mutually satisfactory outcome. The mediator does not make decisions, but helps the parties reach their own agreements.³² Any attempts to settle the matter cannot be used against or for you in a later hearing. In fact, the mediator will not be involved in any way beyond the mediation.

D. TEA Complaint

If a matter cannot be settled during mediation or you do not request a mediation, then you may file a formal Special Education Complaint with the TEA.³³ There are forms online to fill out in order to properly file a complaint – visit the TEA website and search for “Special Education Complaint Forms”. In particular, a TEA complaint must identify (1) the child, (2) state that a local education agency (such as a school or district) has violated a particular portion of IDEA, (3) list the facts of the violation, as well as (4) provide a proposed solution to the problem. The Complaint must be signed and provide a current address of the parent and child. It must be filed within one year of the violation. You must provide a copy of the complaint to the school district or the public servicing agency involved in your child’s

32 34 C.F.R. 300.506.

33 34 C.F.R. 300.507-508; 19 TEX ADMIN. CODE Sec. 89.1165.

education. The TEA will review the complaint and may conduct an investigation. It is required to issue a decision within 60 days after the complaint is filed.

If you are not comfortable preparing a TEA complaint on your own, find a parent advocacy group or an attorney who has knowledge of school law or special education laws to handle the matter for you. The school must inform you of any free or low-cost legal services available in your area if you request the information or if you file a complaint.³⁴

E. Due Process Hearing

You may also file a request for a Due Process Hearing with the TEA. Once you file a request, you will be contacted by TEA with the name of a Hearing Officer assigned to your case within five (5) business days. A matter must be fully resolved within forty-five (45) days of your request for a hearing unless the Hearing Officer grants a continuance and agrees to hold the hearing outside the 45-day period. Further, a school district has fifteen (15) days from the date they receive notice of the request for a hearing to schedule a “resolution session” with the parent.³⁵ Unless you bring an attorney to this resolution session, the district cannot bring an attorney. However, they are required to bring a district employee who has the power to resolve the matter. If the district cannot resolve the matter within thirty (30) days of the hearing request, the hearing process must move forward.³⁶ You may agree, in writing, to waive this resolution session. Note, a resolution is different from mediation because there is no neutral third-party present who is knowledgeable of special education laws.

Prior to your hearing, you have the right to ask the district for any information regarding your case to include, but not limited to, all copies of your ARD paperwork, evaluations, teacher notes, class work, etc. However, the district may charge a fee for copying.³⁷ If you want to have a particular person present, such as a school teacher or a physician, to give testimony, you may ask them to come. However, if you want to ensure they will be there, you must subpoena them. You may contact an attorney to determine how to correctly issue a subpoena, or ask the Hearing Officer during a prehearing conference that is often held to discuss such procedural issues.

The Due Process Hearing has much of the formality of a courtroom proceeding. Generally there are “opening statements” and then a presentation of the facts and

34 34 C.F.R. 300-507.

35 34 C.F.R. Sec. 300.511; 19 TEX ADMIN. CODE Sec. 89.1880. 1885.

36 34 C.F.R. Sec. 300.510.

37 19 TEX ADMIN. CODE Sec. 89.1180.

evidence through the examination of witnesses by the Petitioner, usually the parent. The Rules of Evidence and Civil Procedure are followed during the process and a court reporter is present. The District has the opportunity to cross examine your witnesses as well as to provide its own witnesses and evidence. At the end, there are closing remarks by both sides. At no time are you allowed to talk to the Hearing Officer about anything involving the case.

At the conclusion of the hearing, the Hearing Officer has until the forty--fifth (45th) day after the filing of the hearing request (unless an extension has been granted for good cause) to make a written decision. The written decision addresses each issue, so it may not be an “all or nothing” situation. If the parent prevails, then the District may be required to pay for the parent’s attorney’s fees. On the other hand, if the parent loses, the parent may be required to pay the District’s attorney’s fees if the Hearing Officer finds that the parent’s hearing request was frivolous, unreasonable, or without foundation, or that the parent continued to pursue the dispute after it clearly became frivolous, unreasonable, or without foundation.³⁸

F. District Court

You have the right to appeal the decision of the Hearing Officer to a federal or state district court within ninety (90) days of the Hearing Officer’s final decision.³⁹ At this point, if you have not hired an attorney, it would be wise to do so to ensure your paperwork is filed correctly and you have advocated all of the proper legal theories. Some state or federal courts may require an attorney to be present.

IV. CONCLUSION

As you can see, there are many facets to your child’s special education. Along with understanding the key phrases and terms, if you will remain an advocate for your child, your child will receive the proper education and hopefully attain his or her achievable goals. Remember, don’t let this handbook be your last resource regarding your child’s education – let it be your first of many resources. This handbook is published as a public service project of the Texas Young Lawyer’s Association. It provides you with a brief overview of the legal system as it pertains to Special Education Laws and is not intended to replace legal advice from an attorney. If you have specific legal questions, you should seek counsel from an attorney in your area.

38 20 U.S.C.A. Sec. 1415(i)(3)(B)(i)(II).

39 34 C.F.R. Sec. 300.515(b).

RESOURCES

Special Education Rules and Regulations

www.tea.state.tx.us/special.ed/rules

The Texas Education Agency has a side-by-side Federal law (a portion of IDEA), Commissioner's rules, and State law handbook to review. In it, every law is written "as is" and may be difficult to read. However, it is extremely useful for checking timelines, requirements, etc.

Special Education in Texas Resources

www.tea.state.tx.us/special.ed/

This part of the Texas Education Agency website provides a lengthy list of forms, question/answer sheets, informative handbooks, reports, laws, etc. It is a great "favorites" to add to your internet and refer to it often to learn more about procedures and rules.

Wrights Law

www.wrightslaw.com

Pete and Pam Wright are attorneys who routinely practice before the Supreme Court of the United States on behalf of special education students. They have authored several "How-To" manuals and have prepared several forms for parents to use as a guide when writing letters, attending ARDs, reviewing and understanding IEPs and BIPs, etc. This is an extremely user-friendly site that links to many other fantastic pro-parent advocacy sites.

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