



Parents' Rights in Special Educations

Ensuring parents are equal partners

Schools should collaborate with parents to identify the needs of children with disabilities. When a parent doesn't agree with the school, they should try to work out the disagreement by talking informally with their child's teacher or a school administrator. When informal conversations don't work, parents have some rights to help ensure their children receive the services and supports they need to be successful at school.

Access to Records

Parents have the right to view any document that the school has about their child. They can also give other people the right to access those documents, like doctors and advocates. Parents can ask schools to explain any documents they don't understand. They can also ask the school to correct any documents that they don't think are accurate. Schools usually should not share documents about a child with anyone outside the school without the parent's permission.

Parent Participation

Parents must be invited to all meetings that are about their child. Schools should try to schedule meetings at a time and place that is convenient for the parent(s). They should tell parents about meetings in writing. The notice from the school should say when and where the meeting will be, who will be there, and what the meeting is about. Schools should provide interpreters for parents who are deaf or do not speak English. Schools can only meet without parents if they have tried more than once and in different ways to reach the parent, and the parent does not come.

Parent Consent

Schools must get a parent's written permission, or consent, before they evaluate a child for special education and before they provide special education services for the first time. If a parent does not consent to an evaluation, a school might be able to get permission through a due process hearing to do the evaluation. Schools cannot get permission to provide special education for the first time through a due process hearing. If the parent does not give the consent, the child cannot get services. However, the school is also not responsible if the child continues to struggle. Parents can give consent for some of the services the school offers, even if they do not give consent for others. The school should provide the services that the parent consented to.

Prior Written Notice

Schools must tell parents in writing before they change a child's special education services. This gives parents a chance to discuss their concerns or file a complaint if they disagree. The notice must be in the parent's native language. The notice must describe the change, why it's needed, and what information the school used to make its decision. Schools must give the same written notice if they do not make a change that the parent requests.

Independent Educational Evaluations

An independent educational evaluation (IEE) is an evaluation done by someone who does not work for the school. Parents can get an IEE whenever they want if they pay for it themselves. Parents can decide whether to share the evaluation with the school. Schools do not have to follow the recommendations in an IEE, but they do have to review and consider them. If a parent requests a change in their child's services because of an IEE and the school refuses, the school needs to provide the parent with a prior written notice.

Parents can ask the school to pay for an IEE if they disagree with an evaluation completed by the school. Parents do not have to explain why they disagree. The school can either agree to pay for the IEE, or they can ask for a due process hearing. At the due process hearing, the school must show that their evaluation was appropriate, which means that it was done properly and addressed all the child's needs. If the school agrees to or is required to pay for an IEE, they still don't have to follow the recommendations, but they must review and consider them.

Complaints

When informal conversations don't resolve disagreements between parents and schools, parents have three formal options to file a complaint.

1. Mediation

A mediator is a neutral person who does not work for the parent or the school. Mediators help the parent and school talk to each other and come to a solution that they both agree with. Mediation must be voluntary, which means that both the parent and school must agree to use it. All information must be confidential or kept private. It cannot be used later in a state complaint or due process complaint. If the school and parent come to an agreement, it must be put in writing. Both the school and parent can go to court to enforce the agreement if the other side doesn't do what they agreed to.

2. State Complaint

Parents can file a state complaint with their state department of education if they do not believe the school is following the law to appropriately support their child. The violation of the law must have occurred within the last year. The state has 60 days to investigate the complaint and send a decision to the parent and school. If the state agrees the school hasn't followed the law, they can provide the school technical assistance, work out a solution with the school, or send the school a corrective action plan that tells them how to fix the problem. There is no appeal if the parent or school disagrees with the state's decision. The decision cannot be enforced by a court.

3. Due Process Complaint

Parents can also file a due process complaint with their state department of education if they do not believe their child is receiving the services they need at school. The failure to provide appropriate services must have occurred within the last two years. A due process hearing is like a trial. The parent and school will present evidence, which can include witnesses and records that support their arguments. A hearing officer is assigned to hold a hearing, listen to both sides, and decide who is right. However, the school has 30 days to try to reach an agreement with the parent before there can be a hearing. If the school and parent can't reach an agreement, the hearing officer has 45 days to hold the hearing and send a decision to the parent and school. The parent and school can appeal the decision to a court if they don't agree with it. Schools are almost always represented by an attorney at a due process hearing. Parents should strongly consider finding an attorney before they ask for a due process hearing. You can find the protection and advocacy program for your state on the [National Disability Rights Network's website](#), or you can find a private attorney on the [Council for Parent Attorneys and Advocates website](#).

Discipline

Children with an IEP have additional rights when they are being disciplined at school. If the school wants to remove the child for more than 10 school days, they must hold a meeting called a “manifestation determination” to decide whether the behavior that led to discipline was caused by the child’s disability or by a failure to implement the child’s IEP. Parents must be invited to participate in the manifestation determination meeting. The team must consider all information about the child when making their decision, including the child’s IEP, information from the child’s teacher, and information from the child’s parents.

If the behavior **WAS NOT** caused by the child’s disability or because the school failed to implement the child’s IEP, then the child can be disciplined like any other child that broke the same school rule. However, the child must still receive special education services during their removal to help them make progress on their IEP goals.

If the behavior **WAS** caused by the child’s disability or because the school failed to implement the child’s IEP, then the child cannot be disciplined for that behavior and must be returned to school immediately. However, the school must also do an evaluation called a functional behavior assessment (FBA) to learn more about what caused the child’s behavior and what can be done to change or avoid that behavior in the future. Then, the school must write a plan called a behavior intervention plan (BIP) that includes:

- Supports to help prevent the behavior from occurring again
- Teaching of replacement behaviors that are acceptable
- Planned responses from school staff if the behavior occurs again
- Strategies to de-escalate the behavior

If the behavior involves a weapon, illegal drugs, or serious bodily injury to the child or another person, there are different rules. The school must still hold a manifestation meeting. However, even if the behavior is caused by the child’s disability or the school’s failure to implement the child’s IEP, the child can still be removed from school for up to 45 school days. The child must receive special education services during their removal to help them make progress on their IEP goals.

Where can I learn more?

You can find additional [resources online](#) or by emailing us at school@thearc.org.