

YOUR RIGHTS SUMMARIZED

The IDEA and Public Law 94-142, the Education for All Handicapped Children Act, includes numerous rights to which you, as a parent, are entitled. Those rights are set forth in this book. Read it carefully and keep it somewhere where you can easily refer to it. In this explanation of rights we have used the word "school" to mean the place where your child is being educated. This may be your neighborhood public school or the educational part of a hospital or some other institution. Wherever your child is, he or she has a right to what the Act refers to as "a free appropriate public education," and the persons responsible for your child's education must see that this is available. If there is an issue regarding who is responsible for your child's education, authority to resolve it rests with your state education agency in the state capitol.

Your rights and those of your handicapped child may be summed up in the following key terms:

Notice - Before your child is tested or placed in a special educational program, you have a right to be notified of what the school plans to do.

Consent - You must give your consent before special tests are conducted and before your child is placed in a special educational program.

Evaluation - You have a right to have a full evaluation of your child's individual educational needs.

Records - You have a right to know what records are kept on your child and a right to see them.

Confidentiality of Information - With the exception of certain individuals (school officials, for example, and teachers with legitimate educational interests,) no one may see your child's records unless you give your written permission .

Least Restrictive Environment - You have a right to have your child educated with non-handicapped children to the maximum extent appropriate.

Hearings - If at any point along the way you do not agree with the way the school is dealing with your child, you have the right to request a hearing. This means that you may seek a formal review if you and the school cannot reach an agreement concerning the identification, evaluation, or placement, or educational program of your child.

The remainder of this section is devoted to these rights in detail. The citations at the left side of the page refer to the specific section of the Federal regulations that have been paraphrased, in the interests of simplicity, in this chapter.

"**NOTICE**" As a parent you have a right to:

300.504(a)(1)(2)

be notified before the school identifies, assesses, or places your child on grounds of having a handicapping condition; or changes an identification, assessment, or placement that has been made; or rejects your request that these actions be taken.

300.506(b)(1)(2)

receive all such notices in writing and in the language you speak and understand best. If there are parents whose native language is not a written language, the school officials must see that the notice is explained to them orally or in a mode of communication they

300.505(c)(1)(2)(3)

understand, that they understand the information they have been given, and that there is written evidence that this requirement has been met.

300.505(a)(3)

be notified of each testing procedure, record, or report the school will use as the basis for any decision regarding your child.

300.505(a)(2)

a description of the plan for your child with an explanation of why it is recommended, what other options were considered, and why those options were ruled out.

300.505(a)(4)

be informed of any other relevant factors that school officials considered in their decision.

Note: The notice you receive must include all of the information contained here.

"CONSENT"

Your written consent is necessary before the school may:

300.500(a)

test your child individually with any

300.504(b)(1)(I)

tests that are not generally given to most other students.

300.504(b)(1)(ii)

place your child in a special education program for the first time.

300.500(a)

Before your consent is given, the school must explain in your native language what you are agreeing to, and the school must be sure that

300.500(b)

you understand it. 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.

300.500 (c)

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

300.504(b)(2)

If you do not give your consent, your child's basic right to attend school and participate in school activities will not be affected by your refusal.

300.504(c)(1)

If you refuse to give your consent, and the school administrators believe what they propose is in your child's best interest, the school may request a hearing. An independent hearing officer would then decide whether your

300.504(c)(2)(I)

child should be tested or placed without your consent. You have a right to attend this hearing and tell why you refuse to give your consent. You also have a right to appeal the

300.504(c)(2)(ii)

decision to the State if the procedure was a local hearing.

300.504(b)(2)

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300.504(c)(2)(ii)

local hearing.

"EVALUATION AND PLACEMENT PROCEDURES"

300.531

Before your child receives any special education services, a full and individual evaluation must be conducted. This means your child will be given specific tests which are not usually given to most school children. In this circumstance your child have a right to:

300.532(a)(1)

be tested in a language which he or she speaks and understands best,

300.530(b)

be tested in such a manner that results are not affected by race or culture,

300.532(a)(2)(3)

be tested by qualified professionals using valid tests which are given according to proper instructions,

300.532(e)

be evaluated by a group of professionals including at least one teacher or specialist who is knowledgeable about the

- kind of problem your child is thought to have,
 - 300.532(F) be tested in all areas related to his or her suspected problem,
 - 300.532(b) be tested through procedures which determine specific areas of educational need, not just an intelligence ("IQ") test,
 - 300.532(d) have his or her educational program determined on the basis of more than one test,
 - 300.534(b) receive a complete re-evaluation every three years, or more frequently if necessary or if requested by you or your child's teacher,
 - 300.534(a) have his or her individualized education program (IEP) reviewed annually.
 - 300.5329(c) Tests must be given to children with impaired hearing or vision, or restricted ability to move or speak, in such a way as to measure the child's potential ability or what the child has learned and not the degree of impairment (unless, of course, measuring impairment is the purpose of the test.)
- When looking at test results and deciding on the best program for your child, the school must:
- 300.533(a)(1) collect information from many sources,
 - 300.533(a)(2) guarantee that this information is documented and carefully considered,
 - 300.533(a)(3) insure that the placement decision is made by a group of professionals including some who know about your child and are professionally capable of interpreting the test results and relating those results to appropriate options,
 - 300.533(a)(4) insure that the placement decision is made in such a way that your child's education will be to the extent appropriate, with children who are not handicapped.
 - 300.533(b) If it is determined that your child is handicapped and is in need of special education and related services, an IEP must be developed.

An IEP is an individualized educational program which must include a statement of your child's present levels of educational performance, a statement of annual goals and short term objectives for your child, a statement of the specific special education and related services to be provided, the extent to which your child will be able to participate in regular education programs, and the projected dates for beginning the special education and how long it is expected to continue. It must also include an objective way of determining, at least annually, whether your child is achieving the short term objectives that were set. This IEP must be decided upon in a meeting which includes a representative of the school your child attends (this must be someone who is qualified to provide or supervise special education,) your child's teacher, you as the child's parent or parents, and your child if that is appropriate. Either you or the school may have others participate. If you wish additional information about your child's IEP you should ask your child's teacher or an official of your child's school.

"INDEPENDENT EDUCATIONAL EVALUATION"

- 300.503(a)(b) If you do not agree with the evaluation provided by the school, that is, if you don't think they gave the right tests or reached the right conclusions, you may have an independent educational evaluation conducted at public expense. An "independent educational
- 300.503(a)(3)(I) evaluation" means that your child will be tested by a qualified person who is not employed by the school your child attends.
- 300.503(a)(3)(ii) The school will either pay for a private evaluation or will arrange for one at no cost to you. However, the school also has a right to a hearing, to show that its evaluation was
- 300.503(b)

appropriate. If the hearing officer decides that the school's evaluation was appropriate, you still have the right to an independent educational evaluation, but not at public expense.

300.503(a)(2)

The school must inform you, upon your request, where independent evaluations are available. If you have an independent evaluation conducted at your own expense, the results of this evaluation:

300.503(c)(1)

must be considered by the school in any decision regarding your child's education, and

300.503(c)(2)

may be presented as evidence in a formal hearing.

300.503(d)

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

300.503(e)

Evaluations conducted at public expense must meet the same criteria (qualifications of examiner, etc.) as those conducted by the school.

"RECORDS"

You have a right to:

300.565

receive, upon your request, a list of the types of education records kept on your child, where they are maintained, and how you can get access to them, and

300.562(a)

inspect and review any of your child's records. The school must comply with your request to do so: without unnecessary delay before an IEP meeting or hearing within 45 days

300.566(b)

(The school may not charge to search for or collect the information)

300.562(b)(1)

have someone at your child's school explain or interpret any item in your child's records

300.562(b)(2)

receive copies of the records if this is the only way to insure that you will be able to review and inspect them. The school may charge a fee for the copies, if such a charge does not prevent you from inspecting and reviewing the records.

300.562(b)(3)

have a representative inspect and review the records.

300.562(c)

The school may assume that you have the authority to inspect and review your child's records unless it has been informed that you do not have this right (because of some legal action such as custody, for example.)

300.567(a)

If you feel that any statements in your child's records are wrong or misleading, you may ask the school to change them. The school must either change such statements in a

300.567(b)

reasonable period of time or formally refuse to do so. If it refuses, school officials

300.567(c)

must inform you of their refusal and advise you of your right to a hearing on the matter.

300.568

If you request such a hearing, the school must hold one.

300.570

This hearing does not necessarily follow the process described in the "hearings" section of this explanation of rights. The hearing may be conducted by any school official who does not have a direct interest in its outcome.

300.569(a)

If the hearing is decided in your favor,

300.569(b)

school officials must change the information and inform you they have done so.

300.569(c)(1)(2)

If the information is held to be accurate, you have the right to add your own statement to the record. Your statement must be kept as long as the contested part of the overall record is kept, and if that record is shown to anyone, your statement must also be shown.

"CONFIDENTIALITY OF INFORMATION"

300.572(a)

The school is responsible for protecting the confidentiality of your child's education records by

300.572(b)

naming the individual who is responsible for insuring the confidentiality of records,

300.572(c)

guaranteeing that all persons who collect or use such information receive training in the State's policies and procedures regarding confidentiality,

300.572(d)

keeping for public inspection a list of those employees who are permitted access to these records.

300.564

permitting parents to see only that information which relates to their own child when records contain information on more than one child,

300.571(a)(1)

requiring your consent before your child's education records are given to anyone not involved in your child's education,

300.571(a)(2)

requiring your consent before using your child's records for any purposes other than those related to providing special education and related services. However, states may have policies and procedures which apply in

300.571(c)

the event that you decline to give this consent and that the school feels the records should be given to the person who requested them. These procedures could allow the school to send copies of the records to the requesting person or agency, under certain circumstances, despite your objection.

300.573(a)(b)

informing you when confidential information on your child is no longer needed. At your request, this information must be destroyed (or changed so that it cannot be identified as belonging to your child).

300.561(a)

States are required to have continuous procedures to identify handicapped children and to publish a statewide notice in newspapers or other media which informs parents of the requirements regarding identification of handicapped children. It must include:

300.561(a)(1)

information as to the languages in which the notice is available,

300.561(a)(2)

a description of the children on whom confidential information is kept and the uses of that information,

300.561(a)(3)

a description of how this information is kept and protected,

300.561(a)(4)

a description of the rights of parents and children regarding this information.

"Least Restrictive Environment"

Your child has a right to:

300.550(b)(1)

be educated to the extent appropriate with children who are not handicapped,

300.550(b)(2)

be in a regular classroom unless the nature or severity of the handicap is such that he or she cannot receive a

- satisfactory education in the regular classroom, using additional aids and services,
- 300.551(b)(1) have a range of placements available, including regular school classes, special classes, special schools or institutions, residential placements, and home instruction,
- 300.553 participate with non-handicapped children in extracurricular and non-academic activities,
- 300.552(c) attend the school he or she would attend if not handicapped, unless the IEP calls for a different placement. Your child's educational placement must be:
- 300.552(a)(1) reviewed and decided upon at least annually,
- 300.552 (a)(2) based on the IEP,
- 300.552(a)(3) as close to home as possible.
- 300.551(a) Every school must have available a variety of settings to meet the educational needs of handicapped children. This range must include
- 300.552(b) any placement which is needed to implement the child's IEP. Provision must also be made for
- 300.551(b)(2) supplying any supplementary services needed when a handicapped child is in a regular class.
- 300.552(d) In selecting the least restrictive environment for your child, school officials must consider any possible harmful effects that a particular placement may have on your child or on services your child is to receive. It is the responsibility of the State Department of Education to:
- 300.554 make arrangements with public and private institutions to insure that to the extent appropriate, handicapped children are educated with non-handicapped children,
- 300.555 insure 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,
- 300.556 insure that all schools in the state are carrying out these requirements. If there is evidence that a school is not, the State Department of Education is obligated to review the school's performance and to see that any shortcomings are corrected.

"HEARINGS"

- 300.506(a) If at any time you cannot come to agreement with the school regarding your child's education, you have the right to ask for an impartial hearing. A hearing may be held on any matter relating to the identification,
- 300.506(b) evaluation, or placement of your child or the provision of a "free appropriate public education." Hearings are to be held by either the State Department of Education or the school directly responsible for your child's education. To obtain a hearing, you should make a written request to the person who is responsible for the education program your child attends.

"HEARING OFFICERS"

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

- 300.507(a)(1) an employee of a public agency (school system, institution, etc.) which is involved

in the education or care of your child,

300.507(a)(2)

anyone who has a personal or professional interest which would conflict with objectivity in the hearing.

300.507(c)

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

"HEARING RIGHTS"

Rights which both you and the school are entitled include the right to:

300.508(a)(1)

be accompanied and advised by legal counsel and by persons with special knowledge of the problems of handicapped children,

300.508(a)(2)

present evidence and cross examine and compel the attendance of witnesses,

300.508(a)(3)

prohibit the introduction of evidence that had not been revealed to you at least five days before the hearing.

300.508(a)(4)

receive a written or recorded verbatim record of the hearing,

300.508(A)(5)

receive a written finding of fact and the decision of the hearing.

You also have the right to:

300.506(c)(1)(2)

be told by the school where free or low cost legal help is available. The school must give you this information at any time you request it or whenever a hearing is to take place,

300.508(b)(1)

have your child attend the hearing if you wish,

300.508(b)(2)

open the hearing to the public if you wish,

300.512(d)

have the hearing conducted at a time and place reasonably convenient to you.

300.512(a)(1)(2)

Within 45 days of receipt of your request for a hearing, the hearing officer must reach a decision and mail you a copy of the decision.

300.512(c)

The hearing officer may grant an extension to this time period at the request of either party. The decision of the hearing officer is final unless either you or the school chooses

300.509

to appeal.

"APPEALS"

300.510(a)(b) If your hearing was held by the State and you are not satisfied, you can bring civil action in a State court or a U.S. district court. If your hearing was held by your school, rather than the State, and if you are dissatisfied with the decision of the hearing officer and would like to appeal it, you must inform the State Department of Education of your desire to do so. The State Department of Education will then conduct an impartial review of the hearing. The officer conducting the review will:

300.510(b)(1)

examine the entire hearing record,

300.510(b)(2)

insure that the hearing was conducted properly,

300.510(b)(3)

seek more evidence if necessary; if a hearing is held to receive this additional evidence, then the hearing rights

- previously described would apply,
300.510(b)(4)
give both parties an opportunity to present arguments,
300.510(b)(5)(6)
make an independent decision and give both parties a copy of the decision.
300.510(c)
The decision of the impartial review must be
300.512(b)(1)(2)
reached and a copy of it mailed to you and the school within 30 days of the request for the review (unless an extension is granted by the
300.511
reviewing official.) The decision is final unless either party chooses to bring civil action and pursue the matter in court. During
300.513(a)(b)
the time that the hearing and appeals process is taking place, your child is to remain in his other present placement, unless you and the school 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.

"SURROGATE PARENTS"

Each school must guarantee that rights of children are protected when:

- 300.514(a)(1)
no parent can be identified,
300.514(a)(2)
the whereabouts of the parents is not known,
300.514(a)(3)
the child is a ward of the State.
300.514(b)
It is the school's duty to appoint a stand-in surrogate, or to see that one is appointed. Either the state or your school must have a method of appointing surrogates. The school
300.514(c)(1)
or state may select a surrogate in any manner permitted by State law, but must make sure that the person selected:
300.514(c)(2)(I)
does not have a conflict of interest,
300.514(c)(2)(ii)
is qualified to represent the child,
300.514(d)(1)(2)
is not an employee of a public agency involved in the education or care of the child (a person is not considered an employee solely because he or she serves as a surrogate).
300.514(e)
The surrogate may represent the child in all matters relating to identification, evaluation, placement, and the provision of a free appropriate public education.