



SPECIAL EDUCATION

Fact Sheet

The Basics:

Regular education rights come from each State's government. However, special education rights come from a federal law known as the Individuals with Disabilities Education Improvement Act of 2004, or the IDEA (also IDEIA). IDEIA was passed in 2004 to ensure that students identified as having disabilities are provided with the services they need in order to get a "free appropriate public education" (FAPE) from the State. If there is a problem with a student's special education plan, the first thing a parent should do is talk to the school and try to work things out. It is important to keep track of communications with the school, including dates of meetings and phone calls, letters, and other paperwork. If the school does not cooperate, parents can file an Administrative Complaint with the Kentucky Department of Education, or request a due process hearing. If the student and parents are not satisfied with the outcome, an appeal can be filed. If the parents still are not satisfied, an appeal can be filed in federal court.

Does a student with special education needs have the same rights as other students?

Students do not lose any rights because they are identified as having special educational needs. However, the federal government does provide additional rights through IDEIA to make sure students receiving special education get a "free appropriate public education." It is illegal for a school to discriminate against special education students because they have special needs, such as in sports or other extracurricular activities. Everyone gets an equal opportunity to participate.

How does a student qualify for IDEIA?

Under the IDEIA, schools must have policies and procedures in place to identify students who may qualify for special educational services. Also, a parent can ask for their child to be tested to see whether the student qualifies for special services. After testing is done, there is an ARC meeting to determine if the student is eligible for special education services. Students can qualify under a number of categories depending upon their area of disability and how that may affect them in school.

What are ARC meetings and do students have to attend?

An Admissions and Release Committee (ARC) meeting must be held for decisions regarding a student's referral for special education, evaluation, individual education plan, placement, or in many instances, disciplinary issues. Unless a parent gives up the right to attend, she or he has a right to attend their child's ARC meeting. The student and parents are equal partners in decisions that are made about special education programming. In fact, schools must notify parents about any ARC meeting and the purpose of the meeting and must keep track of all attempts to schedule meetings with parents. Attending ARC meetings is a good idea since students and parents can hear first hand from the school about decisions being made about the student and give input into the decisions.

Do kids need lawyers in this process?

Maybe. Some organizations, like the Children's Law Center or the Legal Aid Society, have lawyers that help students in schools get the special education that they need. Whether or not a lawyer can help depends on the specific case, but it does not hurt to call. Even if the lawyer cannot provide representation, they may be able to provide information to the student and parent and refer them to other sources of help.

Can the school move a student without the student's consent?

A school district cannot make a decision on its own to relocate a student. No change of placement can be made (unless the parents decide) for a student who has been identified as having special needs, without first having an ARC meeting to discuss all issues that might be important. Also, there is a "Stay Put" provision that says if there is a difference of opinion, the parents can file for

a due process hearing, and the student stays put where he or she is, until everything is figured out.

What happens when a special education student graduates?

Once a student obtains a high school diploma, the school district no longer has to provide special services.

When do services stop?

Services stop when one of three things happens: (1) The student no longer meets the requirements under IDEIA, (2) The student reaches the age of 21, (3) The student graduates with a regular high school diploma.

Can special education students be suspended from school?

Special education students can be suspended from school for violating the school code of conduct, but generally not for more than ten school days. If a student is out of school for more than ten days, he or she must be provided appropriate education services. Within ten school days of a suspension, there must be an ARC meeting called a "Manifestation Hearing" to discuss whether or not the student's conduct was related to his or her disability, whether or not the school failed to implement the student's IEP properly, and to discuss what steps need to be taken next. In certain cases, a student can be removed for up to 45 days, for behavior such as carrying a gun or drugs to school. In such cases, there are still certain rules that must be followed, such as holding an ARC meeting to determine appropriate steps to take. Even in alternative schools, appropriate education is guaranteed, and being in an alternative school setting does not change these rules.

What if there is a disagreement over the results of the Manifestation hearing?

If the student or parent disagrees with the results of the hearing, they can request a due process hearing. A hearing officer must conduct a hearing to review the case within 20 school days of filing the appeal, and make a decision about the results within 10 school days. If the student and parent still disagree with the results, the parent can file an appeal with the Exceptional Children Appeals Board. Parents (or an attorney) must send the appeal by certified mail within thirty calendar days of date of the hearing officer's decision.

Can a special education student be expelled from school?

A school may decide that a student's current placement might be harmful to the student, other students, or school employees. In this case, the school must put the student in an appropriate alternative placement that will provide for the student's education needs. However, if the ARC committee finds that the student's behavior is not related to the student's disability, they can expel the student based on their regular policies.

Resources:

Special Education

- 20 U.S.C. § 1400 (2008) (IDEIA)
- KY. REV. STAT. ANN. § 157.195-290; § 158.150 (suspension or expulsion)
- 707 KY. ADMIN. REGS. 1; 1: 290, § 7; 1:310, § 1; 1: 340, § 10
- 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973)

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