



Resource 9

Parent and Child Rights in Special Education

Use this information, from the New Mexico Public Education Department’s Special Education Bureau web site, to review the rights of children in Special Education.

What Is Special About Special Education?

Special education is instruction designed specifically to meet the unique needs of children with exceptionalities—those who have one or more disabilities as defined by federal law,* or in the state of New Mexico, who are determined to be gifted. It is important to note that not all students who have a disability or who are struggling qualify for special education. To be eligible for special education or related services, the child must meet two requirements. First, he or she must be found to have a qualifying exceptionality. In addition, the nature of the exceptionality must be such that it directly affects his or her opportunity or ability to learn and progress in the educational program or environment provided for the general student population. Special education and related services are designed to help a child learn the information and skills that other children are learning.

An Overview of the Special Education Process

Every child is special because he or she is a unique individual. In the United States, we provide a free, public education to every child. Schools provide a general curriculum designed to meet the needs of most children and prepare them to function independently as adults and participate in their community. Special education services are provided to those students who, because of exceptionalities, need additional support in order to learn and attain these same goals. It is also the goal of special education to provide services and supports to students in the least restrictive environment (LRE) along side students without disabilities.

Decisions about a child’s program and/or placement are not made lightly or easily. It takes a team using their combined knowledge and expertise to make decisions that are in the best interest of the child. A specific process is followed and you, the parent, are an essential part of the team. The child is also included whenever possible and must be invited to participate if he or she is 14 or older.

In order to better understand your role and your rights in the decisions made about your child, it may be helpful to first take a look at how the special education process works in general.

Step 1 - Pre-referral/Referral Interventions

The child is referred for consideration of the possible need for special education and/or related services. Referrals can come from the school or parents. Local school districts must provide screening and appropriate interventions through a Student Assistance Team (SAT) child study process before referring a child for a full special education evaluation unless a student has an obvious disability or a serious and urgent problem.

Step 2 - Initial Evaluation

The child is evaluated. This may involve formal testing, observations or even outside specialists. Written parental consent must be given before an initial evaluation or a reevaluation.

Step 3 – Determine Eligibility

Based on all the information gathered, a group of qualified professionals and the parent decide whether the child is eligible for special education or related services. A student may be found to be eligible because he or she has a defined exceptionality that directly affects learning or found to be ineligible because either the exceptionality does not directly affect learning or there is no concrete evidence that an exceptionality exists.



Step 4 – IEP Development

If the child is found eligible, a team is assembled and a meeting held to develop an Individualized Education Program (IEP). The IEP is the master plan for the child’s special education and any related services, such as speech therapy or physical therapy that the child needs to benefit from instruction. Parents must be invited to the meeting and to participate as members of the team.

Step 5 – IEP Implementation

Parents consent is required before beginning any special education or related services.

Step 6 – IEP Review/Revision

The IEP must be formally reviewed at least once a year, more often if necessary, or as requested by the school or parent.

Step 7 – Reevaluation

A child receiving services must be reevaluated at least every three years (unless you and the school agree that a specific reevaluation is not necessary).

Step 8 – Determine if Eligible

Eligibility must be reexamined and re-determined after a reevaluation as in Steps 2 and 3.

Step 9 – Exit from Services or Continued Services

If the child is found to still be eligible, the team begins again at Step 4. If not, he or she exits the program.

*Federal law (IDEA-Part B 34 CFR Sec.300.7) defines thirteen categories of disability: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disability orthopedic impairment, other health impairment (including ADD, ADHD), serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury and visual impairment, including blindness.

For more information, this document, “Parent and Child Rights in Special Education”, can be accessed in its entirety from the New Mexico Public Education Department’s Special Education web site at:

<http://www.ped.state.nm.us/seo/library/procedural.safeguards.interim.draft.pdf>