

Special Education Rights – An Introduction

Your child's education is a precious right, so you must take every conceivable opportunity to safeguard this right. If your child needs special services to get the most from his/her education, it is best to have the services of an experienced attorney to shepherd your way through a complicated and sometimes difficult process.

The whole concept of services rendered to a child with special needs can be summed up as the best available services a school district can offer in the least restricted (also called mainstreamed) environment to do so. This invariably means that the school district must spend extra time and money, so some conflict can be reasonably expected in times of reduced school budgets.

This guidebook seeks to provide you with an overview of your child's special educational rights and to provide you with useful information in dealing with your school district. It is important to speak to an attorney as soon as you feel you may have a claim, in order to protect your rights and make the best case for you.



Call now for your free consultation.

The Margiotta Law Firm has experience practicing in the area of education law. In addition to special education issues outlined in this guidebook, the firm also handles the following education law matters:

- Students' Rights
- Parental Rights
- Representing parents and students with school suspensions
- Representation with superintendent (3214) hearings
- Teachers' Rights
- CSE Hearings
- PINS matters

The firm advocates zealously on our clients' behalf to ensure their children are treated fairly.

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Is Your Child Getting
The Services They
Need From Your
School District?

Does Your Child Have a Disability?

First, your child must have a “disability” recognized by the federal and state governments. What may be a disability to you might not be so seen by the school district, or the school district might view the disability as not needing the services you ask for, anyway. Disabilities range from common allergies to psychological barriers to readily accepted, physically crippling diseases and illnesses. Your child’s disability must be presented to the local school district’s special education program with significant medical documentation stretching several years back. The district then tries to enter into an Individualized Education Program (or IEP) with the parents of the child.

The Individualized Education Program (IEP)

An IEP is in every way a legal document, a signed contract between the parent and the school district which can be enforced, if needed, in a court of law. Everyone must sign off on the IEP.

If the IEP is not suitable to your child’s needs, there is a very informal but strictly enforced IEP review system set up by federal law, enabling you to argue for a better IEP. You must not sign off on an IEP which doesn’t address the needs of your child in both ways: the IEP must deliver services by the school district which helps your child learn and, also, must render these services in the least restricted environment to do so. That means, usually, that your child must learn along with children with no disability apparent to the child. This environment must be the least restricted so the child doesn’t feel isolated or out of touch with his/her peers. Your child’s education does not only involve book learning, but also socialization. An isolated child doesn’t learn as well.

Do I Need An Attorney?

An experienced attorney often steps in to negotiate with a school district to help you obtain the services your child needs, in the least restricted environment, as provided for in the IEP. Most people have no experience in bargaining with government authorities for services; we do not usually negotiate with the sanitation department, the police or fire department for essential services, but education as an essential service must often be negotiated for the special education child. You must remember that school boards are rarely enthusiastic to spend money.

If, even at this time, the school district and the parent cannot reach an agreement, and neither side or one side doesn’t sign the IEP, then an experienced attorney can take the school district to the local federal or state court. This is not commonly done, but school districts often argue against a parent’s often better judgment of the usefulness of an IEP. A judge can, and will, side with either side or even offer both parties a settlement. This is important because a child has a special relationship with the court; the court will take every effort to remedy the problems, as the child will be considered a “ward of the court” in the matter.

Both sides often hire experts to back their side. These experts speak of the desirability of their own IEP proposals. They also hire school attorneys, who are very experienced in the process, to argue their side. You will be at a great disadvantage without your own lawyer. Remember that good IEPs are very expensive, so a school district has a great incentive to pare down or even eliminate services. Court cases are also expensive, but judges tend to see the welfare of the child as more important than school budgets in every matter.

As a contract, the IEP will be strictly enforced, which sometimes means that a school district will often strive to cut corners during the years that an IEP is in effect. This may well mean going back to negotiations and to court, with the same incentive for the school district to fight services, even under an IEP. An IEP must also be renewed after so many years.

We Deserve The Best From Our School District!



If you need services for your child, get an IEP. If you need to get an IEP, consider putting an experienced attorney on your side.