

PARENT ADVOCATES

The Making of a Successful Parent Advocate

A special education lawyer offers parents valuable tips for reaching a successful outcome.

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Often a parent's receipt of a diagnosis of special needs in their child is a heart-wrenching experience. We hurt for our children when we learn that they will face special challenges that many of their peers might not and that life might present them with hurdles that could be difficult to overcome. Needless-to-say our next step is often a commitment to get them what they need to negotiate these obstacles, do well in school, and ultimately become a successful adult. For many parents this requires becoming a successful special education advocate.

According to Massachusetts and federal law, whether your child struggles with a reading disorder, developmental delays, or emotional issues, all children with impairments that affect their educational progress are entitled to a "free appropriate public education" (FAPE) in the "least restrictive environment" (LRE). FAPE, in special education law, means your child has a legal right to any sort of specialized educational services or other support services that are appropriate for your child. LRE means your public school must deliver those services as part of the educational program your child would otherwise attend, unless doing so would compromise his/her ability to be successful. What is important to know is that "special education" is *not* a derogatory term, an inferior classroom, or a separate school. Special education is a set of legal rights provided by Congress to assure children with neurological, developmental, medical, emotional, mental health, and cognitive impairments the opportunity to be successful in school.

Understanding Your Legal Rights

The concepts of FAPE and LRE are encompassed in a decades old federal law entitled the Individuals with Disabilities Education Act (IDEA) that imparts educational civil

rights to children who are unable to make effective progress in regular education due to an identified disability. It is also a law that provides certain procedural protections to parents, essentially dictating the steps that schools must follow when developing the correct educational program for a child. What the law does *not* do is decree which children receive what services. That decision is specifically left to a “team” of people, including parents and school personnel, to determine whether a child is eligible, what the child’s individual needs are, what services are appropriate to meet those needs, and in what setting those services should be provided. The key word is that such service planning must be “individualized” for each child, which might or might not equate to providing your child the services the school generally offers to other special needs students. It all depends on your special child’s unique needs.

The law obligates public school districts to identify and evaluate children who are suspected of possessing disabling conditions, and builds in a process for consulting the recommendations of in-school and private professionals to guide the team in designing an educational program to meet the child’s needs. This educational program must be presented to parents in the form of an Individualized Education Program (IEP), which describes the services the district has agreed to provide, the individualized education goals to be achieved over the following year, and a process for monitoring the child’s achievement. Parents have rights to seek private independent evaluations of their child’s special needs (sometimes at the expense of the school district), and to have reports of those professionals reviewed and considered by the team. They also have incontrovertible rights to view any program proposed for their child or have a professional with whom they are consulting do so.

Furthermore, the federal law and its state counterpart provide a mechanism for resolving differences between schools and parents when the “team” process does not result in agreement. Such disagreements can be resolved informally, or by the utilization of the state Department of Education’s mediation or hearing procedures.

My experience as an attorney representing parents in cases in which the special education laws are at issue, has shown me that those parents who are appropriately pro-active, prepared, positive and “professional” are frequently able to come to beneficial agreements with school districts to provide the services to which their child is entitled.

Successful Strategies

To increase your chances of working successfully with your child's special education "team", I suggest:

1. Start early – Don't wait to begin the process if you suspect your child might have a learning difference or other issues that might cause her difficulty in keeping pace with her peers. Early Intervention programs are invaluable assets for identifying delays; providing appropriate, professional, and often in-home, services; and monitoring the progress of very young children up to age three years. Their thorough knowledge of your child and referral to your public school at age three can help to set the stage for educating the school staff about your child's needs. If you have not been involved with Early Intervention and your child is from age 3 to 22, your first step in starting the process of requesting a special education evaluation should always be accompanied by a written request to the Special Education Director of your school district.
2. Rely on reputable experts – Although your school district is required to evaluate your child in all areas of suspected needs and provide unbiased and professional testing with specific recommendations for meeting your child's needs, there is much parents can learn from seeking independent evaluations from highly experienced and credentialed private experts. Developing a relationship with such a private professional will lend needed authority to a parent's claims for specialized services. The services of such experts might be covered by your health insurance, or paid for by the school depending on your income. If neither is the case or the expert that is right for your child doesn't accept this form of payment, think again before choosing a less-expensive route. Money spent on the services of an impeccably trained and highly experienced expert in the area of your child's disability will both ease your mind and strengthen your claims.
3. Know your goal – Be sure to be able to articulate not just the service you are requesting but also what educational goal you wish your child to achieve, i.e. reading skills commensurate with peers by the end of the next 12-month period. These are questions you will be asked at the team meeting. Your preparation will help to focus the "team" and illustrate that you have high standards for the program.
4. Learn the rules – As noted above, special education law is predicated on process and procedure. Parents benefit from displaying knowledge about the rules and keeping the process moving forward. Be sure, however, not to become bogged down in flagging each procedural misstep by the school. Unless the error harms your child's education in a significant way, schools are rarely if ever held to account for past procedural errors.
5. Communicate with teachers – The people in your child's school who work directly with her on a daily basis have special knowledge about your child and are very likely your allies. They are usually the first to realize if your child has needs that require assistance outside the regular classroom. Ask them questions and value their opinions. Be sure to provide them with a full and complete picture of who your child is. Any and all evaluations you have had of your child should be

- shared with the school. The earlier that the school is put on notice of your child's needs, the earlier they will be expected to provide appropriate supports.
6. Document everything - Don't assume the worst, but plan for it. Collaborate with your school with the working expectation that the team process will be successful, however, don't be naive. Most school districts work with limited budgets and if the service you are requesting is costly the school might wish to try several other options first. Be sure to keep records of your requests to the school and notes of your meetings, they might be helpful one day in the event that you need to reconstruct your child's educational history.
 7. Go the distance – Although our children seem to grow up in the blink of an eye, the legal process of asserting your child's rights to an appropriate education might take time. If agreement cannot be reached easily with your school district, you might need to prepare for a process of further evaluation, re-meeting, a trial of options, retesting, and in some cases, an appeal that can take months of dedication to reach the goal.
 8. Take the “high road” – For the simple reason that this process involves your child it is laden with emotion. When you believe you have identified the services your child needs to succeed, it can often be difficult to have a dispassionate discussion about your child's needs with school staff who disagree. I always remind clients that it is important to remain as calm yet as persistent as possible when dealing with the school's professionals. Such restraint might just garner the support you need from the least expected, yet possibly most influential person. Also, in the event that you find yourself at the hearing level, a parent's past emotional missteps might color the decision-maker's view of your case. Keep your eye on the prize!

The United States has strong civil rights laws for persons with disabilities that are unparalleled in much of the world and a system of free public education founded in our democratic values. This does not mean, however, that the appropriate services are just there for the taking for every child in need. Accessing the services to which our children are entitled means taking the steps to educate ourselves, developing strong advocacy skills, building collaborative relationships with our schools, and utilizing the protections of the law and legal professionals when necessary.