

# *IDEA - a Review of Your Rights*

*These are your rights as I understand them (though it is not an all-inclusive list), and as they apply in CT; but each state is different in their procedures, language, etc. Although I have included some comments of my own, please keep in mind that **interpretation of the law is open, and I am not a lawyer!** If you are in doubt about anything written here, check it out with an appropriate party - a parent advocate, a lawyer versed in special education law, or call your state's parent advocacy center (by federal law, every state has such a center. In CT the number for the CT Parent Advocacy Center is 860-739-3089). For more information on these as well as additional rights, you may contact CPAC, the Bureau of Special Education 860-842-8678 or 860-807-2025, or the Special Education Resource Center 860-632-1485.*

- Ü **No child can be excluded from public education because of a disability.**
- Ü **Every child is entitled to a free, appropriate public education regardless of the nature of the disability.** This does not mean an optimum or the best program, but do not settle for less than what you believe your child needs.
- Ü **Children with disabilities must be educated with non-disabled students to the maximum extent appropriate to their needs.** 'Appropriate' is a gray area, especially for children with autism spectrum disorders. While peer interaction is vital, many children have difficulty with the sensory overload inherent in a regular classroom. Some children do very well fully mainstreamed. Try to determine in your own child's case whether peer interaction for a full day compensates for the amount of stress it will put on him/her. Be flexible and be alert to signs of overload - inclusion is only beneficial to those who are able to function adequately within a typical classroom setting (with supports and modifications, of course). Be aware – the focus of the IDEA laws is toward inclusion, and decisions surrounding inclusion need to be incorporated into the IEP. Do not feel pressured by this; the setting still must be APPROPRIATE to the child and his/her needs, and though it is required to consider the 'least restrictive environment', that means the least restrictive for this child, not the least restrictive that is possible for other kids. It also means that they have to be considered, not that he/she has to try them and fail before a more-restrictive setting is chosen. There needs to be a 'continuum' of choices to be discussed, such as a resource room, or special education classroom, and they can be used in combination with inclusion, so you need not choose between one or the other. There are also regional programs and private placements as further options if deemed necessary. The focus of your decision should be on answering the question: what skills do you want your child to learn, and can they learn them in the mainstream classroom?
- Ü **YOU as the parent are considered to be a member of the IEP (Individual Education Plan) team** that decides on which types of evaluations will be conducted, the need for placement in special education, the design of his/her school program, and reviewing the program at least once a year. If you have concerns in a certain area (motor skills, reading, etc.) you can recommend testing, you

need not wait for the school to suggest it. You have a right to bring other persons to the meeting such as psychologists, advocates, or lawyers (though I wouldn't suggest a lawyer unless it becomes evident that you need one – if you bring one, the school will too, and then it becomes another type of meeting altogether) who can help you make appropriate decisions regarding the program. If there is someone at the school that you feel has some important insight such as a paraprofessional, you may ask for him/her to be invited (though there is no law that requires the district to comply - this is a **NEGOTIATION POINT**). ***You are considered BY LAW to be a member of this team.*** Please take advantage of this right. They can hold the meeting without you or your input if you do not respond to their written notification or if you are unreasonable about the meeting accommodations. If they feel you are not interested, your sincerity and better judgment may be in question now and in the future as well.

Ü **The school will prepare a report of the findings of any assessment and present it at the IEP meeting. You have a right to a copy of the report and recommendations and to have a full explanation of their findings.** The child must be reevaluated at least every three years. Make sure you fully understand the nature of the tests given and the relevance of the scores and what they indicate about *your* child. If you feel testing should have been done that was not, ask for it (preferably this should have been done when designing the assessment so as not to waste time, but better late than never). It is a good idea to ask for copies BEFORE the PPT (Planning and Placement Team meeting), so you have a chance to review them beforehand, but unfortunately, this is not required by law.

Ü **You have the right to inspect your child's school records, and in CT to receive one free copy.** You must request a copy in writing, so be sure to do it in time to receive them before the meeting if possible, and keep them in a safe place for future reference - the school is only required to give you one set at no charge (this is the law in CT, other states may be different).

Ü **Input from parents must be considered in developing the IEP.** Some school systems will prepare a draft before the meeting as a "working copy" in order to save time. While this is sometimes practical, do not accept a *final* copy being brought to the meeting. The final copy should be written at the meeting. Remember, if something is not written into the IEP, it will not be worked on during the year no matter how many assurances you receive during the course of the meeting. Even with the best of intentions, who could possibly remember in September all that is said at every PPT that takes place at the end of the previous school year? GET IT IN WRITING! Parents may disagree with decisions at any time during the meeting or afterward. They may request changes of inaccuracies on the IEP, request another PPT for further or additional discussions, or pursue due process procedures depending upon the circumstance.

Ü **The regular education teacher (if the child's program includes his/her involvement in regular education) is a formal member of the team, and should be involved in the development of the IEP including appropriate positive behavioral interventions and strategies,**

### **supplementary aids and services, program modifications, and support for school personnel.**

This means that they now have WRITTEN PERMISSION to request help when they need it – whether it be a para, training in a particular disability and interventions, or technical equipment. It also means that if they are at the PPT, they will hear the discussion about your child and hopefully have a better understanding than was required in the past (if your child has several ‘regular ed’ teachers, only one is required to attend). *Please note* that it is not required that other teachers (art, gym, etc.) ever see a copy of the IEP or any evaluations, but they are required to implement the modifications in their instructional area. In other words, they may not have any real knowledge about your child’s profile other than the modifications that they personally may be responsible for. Hopefully, your school district will ensure that they have enough information to be successful with your child without being required to do so.

Ü **There is nothing written in the law regarding time limits or limits as to the number of meetings.** Please be courteous - these professionals have other meetings to attend and classrooms to return to, and we don’t wish to waste their time - *but* - don't let them rush you either. Decisions should never be made because there is not sufficient time to consider all alternatives. Don't be afraid to ask questions, and if you need more time to consider a proposal, do some research, or if you are dissatisfied with the proceedings you can request to reconvene at a later time.

Ü **If parents disagree with an evaluation conducted by a school district, they have the right to an independent educational evaluation (from someone not associated with the district) at the district’s expense unless the district can show that it’s evaluation was appropriate.** If the district feels it’s evaluation was appropriate, they can initiate a due process hearing to prove that point. Parents might disagree with an evaluation for a variety of reasons, such as if they feel it was incomplete, inaccurate, or the methods used were outdated (but you are not required to give the reason you disagree). *The district is NOT allowed to simply state at a PPT that their evaluation was appropriate and refuse you an independent one without initiating a due process hearing.* If the school initiates due process, and if the hearing officer determines that the school’s evaluation WAS appropriate, they will not have to pay for an independent one. You still have the right to have the evaluation done at your own expense. Remember, no matter who pays for the evaluation, the school is not required to accept the findings of an independent evaluator, only to consider them. These findings do not supersede the school's evaluation, but should be considered to be a ‘second opinion’ (it would be to your advantage here to choose an evaluator acceptable to both parties - it just might enhance the willingness of the school to accept the findings as well as to finance the evaluation).

Ü **You must be sent a copy of the completed IEP within 5 days after the meeting and it should contain:**

q **A statement of the child's present performance level.** It must also include how the disability affects involvement in the general curriculum (or for preschoolers, participation in appropriate activities). If the child receives modified grades, be sure you know just how much

they are modified. How does his work really compare to his peers, even if his formal grades may not reflect that.

Q **A statement of measurable annual educational goals** (be sure at the PPT that you discuss how they will measure progress – oftentimes simple ‘teacher observation’ is not an accurate enough measure).

Q **Short-term instructional objectives** used to achieve 1). The annual goal, 2). Enable involvement and progress in the general curriculum, 3). Other educational needs that result from the disability (this is open to interpretation, but social or independence skills can be addressed under this category).

Q **Related Services, such as therapies, transportation, tutors, counseling, modifications, etc.** that are required by the child to advance toward attaining the goals, be involved and participate in general curriculum, and participate with other non-disabled children. Related services can include family training in the disability, behavior planning, etc.

Q **A description of the child's participation in mainstream** and the means of facilitating interaction with peers. This should include discussion about the playground, cafeteria, and other less-structured times of the day.

Q **A statement of the extent to which a child will not participate with non-disabled children.** This means time spent in pull-out therapies, time in the resource room, or time away from homeroom or other activities. Be sure to discuss things like field trips, assemblies, etc.

Ü **Parents have a right to object to evaluation and placement decisions regarding their children.** Since you are a member of the team, this does not mean you can overrule a decision, but that your opinion must be considered along with everyone else's, and that you have a right to fight it in a due process hearing. If you make a request or objection during a PPT, it is to be documented on the IEP. Be sure that your comments appear in the IEP, as well as an explanation as to why the team decided against your requests.

Ü **If an agreement cannot be reached over appropriate education for a child, either party has the right to request a due process hearing.** If both parties agree to try mediation (available in most states), an informal process, a decision may be able to be reached without a formal hearing. More information about mediation and due process hearings, as well as other aspects of the law can be found in the Procedural Safeguards pamphlet most parents have a million of, or in the new Special Education Handbook available from SERC (860-632-1485 or [www.serc.rh.edu](http://www.serc.rh.edu)).

Ü **Your child is a member of the IEP team** and has the right to attend the IEP meetings and be involved in the decision-making. At the age of 13 the child will be required to be invited (though some districts begin this practice earlier), though they are not required to attend if the team feels it is not appropriate for the individual child. Think long and hard on this. Be sure to take your child's maturity level into consideration - remember, he's the one whom you will be talking about. Consider your own relationship with the team. If he/she attends, keep the comments positive and avoid a heated argument in front of the child, but remember you may not be able to accomplish your goals while

he/she is present. Perhaps you can arrange for him/her to attend PART of the meeting – say, the last half-hour, to express concerns or comments after all of the negotiating is done. It's your decision whether or not it is in the child's best interest to attend (until he/she is 18 and if guardianship has not been established – in that case, it is the decision of the young adult).

Ü **Transition services must be provided for students beginning no later than age 16** and annually thereafter. In Connecticut, the state law supersedes - it must begin no later than the annual review after a child's 15<sup>th</sup> birthday and, if deemed appropriate, can be developed even younger. At the annual review following a child's 13<sup>th</sup> birthday a statement of transition needs that focus on courses of study must be added to the IEP. Transition services need to include areas of post-secondary education (if the child anticipates attending college, adult ed, etc.), employment, independent living skills, and community participation.

Ü **Educational rights transfer from the parent to the child upon the child's 18<sup>th</sup> birthday** unless he/she has been formally determined to be incompetent or unable to provide informed consent regarding his/her education program. Parents must file for legal guardianship in order to prevent the transfer. If your child is not going to graduate at age 18, this is particularly important – otherwise, he/she will be making the decisions at their PPTs, and parents may not have a formal say. Is your child able to make decisions based on his/her best interest in the long-term?

## **Additional Suggestions for Parents:**

### **Before the meeting:**

Ü Know as much as you can about your child's diagnosis and the appropriate therapies and strategies.

Ü Get input from your child about his school situation and his feelings. Check his homework and keep samples of his work (best and worst) and bring them with you to the meeting as examples of concerns.

Ü Be sure to make all requests to the school **in writing** and find out all procedures ahead of time. Keep copies of all correspondence and take notes during phone conversations.

Ü **Don't wait for the school to offer particular services or to inform you of what you can request of them.** *Their very limited money is at stake* (even teachers and support personnel are sometimes reluctant to make requests that are costly for fear of repercussions - it's up to you). If you are not sure what services you can request, **check it out ahead of time** and be sure the district knows you are aware of your rights.

Ü Be prepared. Make a list of all services and specifics you wish to request and their goals (sort of your own "working copy" of an IEP). Make sure you have researched them well. Make a list of

alternatives that might be acceptable to you and the criteria that must be followed for you to accept it. EXAMPLE: If you ask for 30 hours of ABA, and they offer 27, is that enough for you to be willing to accept it? How about if they offer 20? Make decisions beforehand on what is strictly non-negotiable for you and what you are willing to be more flexible on.

Ü Whenever you are making decisions, be sure to get all the details and think about it - if you need more time, say so. Don't let them rush a decision.

Ü Get all the information you can on the different possibilities through the grapevine. It is advantageous to develop a trusting relationship with teachers and professionals. Talk with them ahead of time one-on-one, you will be more likely to get useful information. If you ask for advice on an "off the record" basis, be sure to honor that confidentiality in the meeting. Respect for the teachers and the fine line they tread is imperative. Inquire of other parents as well, since they may have more information than you do about what options are available. Support organizations are a great resource for this.

Ü Be sure to ask teachers about non-academic areas such as social problems and methods used to overcome them; i.e. whom does he sit with at lunch? What is he like at recess? Also be sure to ask about the child's relationships with therapists, etc. Does he look forward to his sessions? Are his skills in that area improving? Is your child's stress level *after* the session interfering with the next lesson? Does she have any suggestions for alleviating these problems?

Ü Write down some pertinent notes about your child's personality, behavior at home, non-school therapies and their success, etc. Also write down any questions you have about the program he's in and possible changes. It is easy to become confused and overwhelmed at the meeting. Bring any paperwork that may help you - previous evaluations, articles on a therapy or program, letters from psychologists, etc.

Ü **Request a copy of the evaluation in advance** so you have time to review it before the meeting (even if it's only an hour before). Go over all of it, write down questions and take your time, especially if this is your first time and you are unfamiliar with the format. You will feel rushed to skim it at the meeting with everyone looking at you and waiting, and it will put you at a disadvantage if you aren't familiar with what the report contains. Your questions will go unexplained because you won't know what to ask.

Ü Consider carefully any request from the district to use your insurance to help pay for a service. Let's face it, if they are willing to pay for any of it, it is probably because it is their responsibility to do so, and though it may be beneficial to use insurance dollars in questions of WHO will deliver the service (your favorite independent OT or someone of their choice, for example), or the quality of service, beware. Depending on your insurance company's policies, you may end up using precious "maximum allowances", and may be unable to provide other needed services to the family because you will be "over the limit". Check this with your insurance company first, to be sure you understand what they will or will not cover.

## The Meeting Itself

Ü Be courteous. Be on time, speak respectfully and be professional (you would expect no less from them, would you?). Read all of the forms and take notes during the meeting. Stay calm and collected and try to remain positive.

Ü Answers like "we just don't have that available at this school", or "we can't afford it" are legally unacceptable. If you hear these answers, be sure the district writes them into the IEP that way, and then take further action. The team is supposed to determine what is appropriate for the child *first*, design the goals, and *then* make the program and placement decisions. Decisions must be made on need, not on current availability.

Ü You have the right to audiotape the meeting, but so do they. Be sure to maintain your temper, and make your points clearly. Always notify them that you will be taping before the meeting so that they can make preparations, and not waste your precious meeting time setting up their own tape recorder (if you have a tape, they may want the same tape for their files too).

Ü If you don't understand something, a test score or even professional jargon, ASK! Not only is it your right, but it will let the rest of the team know that you are interested, cooperative, and *informed*.

Ü Be honest and forthright, but try to do so without being rude or combative. **You** are the expert on your child; if you feel that something being said is not accurate, speak up as a full member of the team. If an offer of services is not acceptable, say so in a firm, yet non-reproachful, manner. It will not help you if the school personnel are put on the defensive - they will probably remain so throughout your child's educational years. If you are easily flustered in an anxiety-prone situation, **this is where your notes and invited guests can come in handy.**

Ü **Remember that you have a right to obtain an independent educational evaluation of the child at public expense if you disagree with an evaluation that was done by the district.** If you ask for an independent evaluation and the district refuses, they *must* initiate due process. If they refuse and do nothing, you may file a complaint with the State Department of Education's Bureau of Special Education since this would be a violation of procedure.

Ü If you are not happy with the outcome of the meeting, say so, and **be sure it is written into the record.** Request another meeting if tempers get hot. Research and start fresh. Make sure they know you are aware of your right for due process and will use it, but avoid resorting to blackmail - don't use it as a threat in the heat of the moment but after calm deliberation, much discussion, and efforts at compromise.

## And Beyond...

Ü After the meeting is long over, *please* keep communication open with the teachers and

specialists. Find out how your child is managing and be sure the IEP is being followed. If your child is not making progress, contact the teacher/therapist first and if not satisfied with the changes contact the school, and go up the 'ladder' till you reach someone who can help you (but don't start at the top). **Don't** wait until the end of the year and the next annual review to fix it – it will be too late.

Ü Give all teachers a brief list of your child's qualities, strengths and weakness, and what works and doesn't work for them. Don't assume that the art teacher has had this lengthy discussion with his special education teacher. Sometimes they have, but more often they have not received any truly useful information that they can use on a day-to-day basis. Be sure to include your phone number and an offer of help if they should need it.

Ü If you are to meet regularly, be sure you know who the contact person is, and don't be afraid to check in with them if you do not hear from them when expected. People do forget, and get sidetracked, and it is not always intentional or personal. A friendly reminder is sometimes in order, and may even be appreciated.

Ü Get involved in the school building. Volunteer in the library or join the PTA. Bring goodies for class parties, or be the room mother if you can. When people get to know you personally, and not just as 'Johnny's mom', they are more likely to try to help you out when you need it or to take your requests seriously. It also gives you the opportunity to observe your child within his school day, which can serve to reassure you that all is going well, or can at least provide you with examples of where or how it is not successful.

Ü If you have questions about the laws regarding the IEP implementation during the year, check them out with an advocate, CPAC, or the Bureau of Special Education before making any accusations! You may be wrong, and once you make an enemy they will likely stay that way. If you are right, they can assist you in getting it resolved effectively.