Brief Summary of the Education Rights of Children with Disabilities

Children with disabilities, ages 3 through 21, are entitled to a free, appropriate, public education in the least restrictive environment, pursuant to an individualized education program.

A child with a disability is a child who has one of the following diagnoses, and who, as a result of his/her disability, is in need of special education:

- Autism
- Serious emotional disability
- Deaf-Blind
- Hearing Impairment
- Intellectual Disability
- Multiple handicaps
- Orthopedic Impairment
- Other health impairment (including Attention Deficit Disorder)
- Developmental Delay
- Specific Learning Disability
- Speech-Language Impairment
- Traumatic Brain Injury
- Visual Impairment

Special education is specialized instruction and related services, provided pursuant to an Individualized Education Program (IEP). In order to be appropriate, it must result in reasonable educational progress for the child. For most children, this means passing from grade to grade and mastering the standard course of study.

The least restrictive environment is the environment in which a child with a disability can, to the maximum extent possible, be educated with children who are not disabled.

Any child suspected of having a disability that is affecting the child’s education is entitled to be evaluated at public expense. A parent must put a request for evaluation in writing, directed to the child’s principal.

Once a child has been determined to be eligible for special education, that child is entitled to have an Individualized Education Program (IEP), which is reviewed at least once per year. He/she should be reevaluated once every three years. An IEP must include a statement of measurable annual goals, a statement of the special education services to be provided, a description of all needed related services and classroom modifications, and a description of the setting in which educational services will be provided (i.e., regular classroom, resource classroom, self-contained classroom, separate school, etc.)

A child with a disability may not be punished for exhibiting symptoms of his/her disability. A disabled child facing long-term suspension (10 days or more) for violating the school’s code of conduct is entitled to have “manifestation determination review” to determine whether the disability was related to the misconduct. Even if the misconduct is found not to be a “manifestation” of the disability and the suspension is enforced, the child must continue to be provided a free, appropriate public education, although educational services can be provided in another setting.
Parents/guardians (which can include foster parents or “surrogate” parents) have the right to participate in all meetings at which decisions are made about the special education services to be provided to a child. Parents/guardians also have the right to appeal decisions made regarding special education. A parent wishing to exercise this right should seek legal counsel.

When to refer a case to The Children’s Law Clinic:

- A school refuses to evaluate a child to determine the existence of a disability
- The child’s parent or guardian disagrees with a decision that the child is not eligible for special education
- A child is making little or no educational progress
- A school has failed to create or implement an IEP
- A child’s educational placement is in an inappropriate setting (like home)
- A child is not receiving a needed related service, such as speech/language therapy, occupational therapy, physical therapy, counseling, social work services, mobility orientation, etc.
- A child is facing a long-term suspension or expulsion from school
- A child is subject to numerous short-term suspensions from school

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