

A PARENT'S GUIDE

CIVIL RIGHTS/ EDUCATION

DisabilityRights

ARKANSAS

INTRODUCTION

The text which follows is directed primarily to the Individuals with Disabilities Act, (IDEA) 20

U.S.C. § 1401 *et seq.* and related Federal statutes including the Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g(b)(1) *et seq.*; Section 504 of the Rehabilitation Act (Section 504) 29 U.S.C. § 794; the No Child Left Behind Act (NCLB) 20 U.S.C. § 6301 *et seq.*; the Americans with Disabilities Act (ADA) 42 U.S.C. § 12101 *et seq.*; and Arkansas state law, including the Children with Disabilities Act, Ark. Stat. Ann. §§ 6-41-202 *et seq.* All of the Federal and State laws discussed in this booklet have specific relation to the education of individuals with disabilities. This booklet represents an effort to describe the processes prescribed by these statutes and their governing regulations.

This "Blue Book" is not intended to offer specific legal advice, but intends to be of general educational value so that the reader may better understand the purpose of the law governing the education of students with disabilities. Although their use is sparing, certain legal citations are used. For example, "U.S.C." simply means United States Code, i.e., Federal statutory law.

Therefore, IDEA begins at volume 20 of the United States Code and is found beginning at section 1401. "C.F.R." means Code of Federal Regulations, i.e., regulations governing and implementing Federal statutes. These written laws may be obtained by calling the Disability Rights Center of Arkansas (DRA). DRA stands ready to supply students, parents, and other interested persons with information and advocacy to advance the cause of equality in educational opportunities for students with disabilities. That information and advocacy are based on law described in this booklet.

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PART I

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

A. PURPOSE OF THE ACT

1. History

In 1975 Congress enacted the Education for all Handicapped Children Act, the predecessor title of the Individuals with Disabilities Education Act (IDEA), for the following reasons:

- Children with disabilities did not receive appropriate educational services
- Children were excluded entirely from the public school system and from being educated with their peers
- Undiagnosed disabilities prevented the children from having a successful educational experience
- Lack of adequate resources within the public school system forced families to find services outside the public school system

The Act provided for Federal grant money to each state to educate children with disabilities with the condition that states would comply with goals and procedures set forth in the legislation.

Two United States District Court cases provided the impetus of this legislation: *PARC v. Pennsylvania* and *Mills v. District of Columbia*. Both cases held that children with disabilities must be given access to an adequate publicly supported education. The Judge in the *Mills* case, finding discrimination on the basis of equal protection, wrote,

"That no handicapped child eligible for publicly supported education in the District of Columbia public schools shall be excluded from a regular school assignment by a Rule, policy, or practice of the Board of Education of the District of Columbia, or its agents, unless such child is provided (a) adequate alternative educational services suited for the child's needs, which may include special education or tuition grants, and (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative."

Over the years the Act has been amended on several occasions (including a change in the title to IDEA), including substantial amendments strengthening the procedural and substantive rights of children with disabilities and their parents. The last amendments were enacted in 2004 and were effective in July 2005. This version of the Bluebook includes updates from the regulations that were released August 3, 2006. The purposes of the legislation remain the same:

marked degree: inability to learn that cannot be explained by intellectual, sensory or health factors; inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; tendency to develop physical symptoms or fears associated with personal or school problems

- Orthopedic impairment - includes impairments caused by congenital anomaly, impairments caused by disease and impairment from other causes
- Autism - a developmental disability significantly affecting verbal and nonverbal communication and social interaction;
- traumatic brain injury - an acquired injury to the brain caused by external physical force resulting in total or partial functional disability or psychosocial impairment or both
- Other health impairment - having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactive disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Tourette's Syndrome and sickle cell anemia and adversely affects the child's educational performance
- Specific learning disability - a disorder in one or more basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations
- Deaf/blindness - concurrent hearing and visual impairments, the combination of which causes such severe communication and other development and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness
- Multiple disabilities - concurrent impairments, blindness, deafness, mental retardation, orthopedic impairment, etc., the combination which causes such severe educational need that they cannot be accommodated in special education programs solely for one of the impairments

Children age three through five (3-5) who are experiencing developmental delays as defined by the state in one or more of the following areas - physical development, cognitive development, communications development, social or emotional development, or adaptive development – may also be children with disabilities.

In every case the evaluated disability must adversely affect a child's educational performance in order to be eligible for special education under IDEA. If, after

Rehabilitation Act of 1973, the Family Education Rights and Privacy Act, and the No Child Left Behind Act, or other Federal statutes protecting the rights of children with disabilities. Those statutes may be used, when appropriate, in conjunction with administrative and judicial actions under IDEA. If, however, the act or failure to act by the school district arises under IDEA (even partially), complete administrative relief must be brought under IDEA and exhausted before filing a civil action (appeal) under IDEA and any of the laws mentioned above.

When engaged in the process of securing an appropriate education for a child with a disability, other statutes should not be overlooked, either in conjunction with IDEA or singly. All of the statutes discussed here will be relevant to parents' and students' progress through the system of education for children with disabilities. At least temporarily, there is an exception to the rule of exhaustion. The Eighth Circuit has recently held that a Section 504 action for damages may be brought despite failure to comply with IDEA administrative procedures. In the future, parents may wish to check with an attorney or with DRA to determine whether such a case is viable.

B. DEFINITIONS 34 C.F.R. §§ 300.5 – 44

Definitions of key terms as used in IDEA are as follows:

- **Assistive Technology Device** – Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. (The term does not include a medical device that is surgically implanted, or the replacement of that device.)
- **Assistive Technology Service** – Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Among the services, the school district must ensure that hearing aids worn in school by children with hearing impairments are functioning properly. The same is true as to external components of surgically-implanted medical devices. However, the district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted.
- **At Risk** – When used with respect to a child, youth, or student, means a school aged individual who is at-risk of academic failure, has a drug or alcohol problem, is pregnant or is a parent, has come into contact with the juvenile justice system in the past, is at least 1 year behind the expected grade level for the age of the individual, has limited English proficiency, is a gang member, has dropped out of school in the past, or has a high absenteeism rate at school.
- **Charter School** – A public school that is operating under the terms of

legally responsible for the child's welfare; or (e) a surrogate parent who has been appointed in accordance with the Act.

- **Personally Identifiable Information** – (a) The name of the child, the child's parent or other family member; (b) the address of the child; (c) a personal identifier such as Social Security or student number; (d) a list of personal characteristics or other information that would make it possible to identify the child.
- **Supplementary Aids and Services** – Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate. Supplementary aids and services determined appropriate and necessary by the IEP Team must be available to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Those services must be available unless the school district enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- **Ward of the State** – May be a foster child, ward of the state, or in the custody of a public child welfare agency as state law provides.

C. CHILD FIND 34 C.F.R. § 300.111

1. Applicability

All children with disabilities residing in the state, including children with disabilities who are homeless or are wards of the state and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated. The State is required to devise a practical method to be implemented to determine which children are currently receiving needed special education and related services. This statewide system shall include, at a minimum, the following components:

- A public awareness program including the preparation and dissemination by the lead agency
- Information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under Part C

- Sign language and cued language services (including screening and services provided by qualified personnel).

2. Requirements

It is the statutory policy of the State of Arkansas that the development of infants and toddlers be enhanced so that the potential for developmental delay will be "minimized". It is also a part of that policy to enhance the ability of families to meet the special needs of their infants and toddlers with disabilities. (It is also a part of this policy to minimize the need for special education and related services when the child reaches school age. Parents should therefore be acutely aware of the requirements of the transition process so that no child with a disability is left without needed services. Administrative and judicial remedies are available to the parents.) The state must meet requirements as follows:

- A state policy that assures that appropriate early intervention services based on scientifically based research are available to all infants and toddlers with disabilities and their families;
- A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler
- An Individualized Family Service Plan
- A comprehensive child find system
- A public awareness program focusing on early identification
- A central directory that includes information on early intervention services, resources and available experts
- A comprehensive system of personnel development

3. Individualized Family Service Plan (IFSP)

An IFSP shall provide, at a minimum, for each infant and toddler with a disability and the infant's or toddler's family to receive:

- A multidisciplinary assessment of the unique strengths and needs of the individual and the identification of appropriate services
- A family directed assessment of the resources, priorities, and concerns of the family
- A written individualized family service plan developed by a multidisciplinary team

The IFSP must be evaluated once a year and the family provided with a review of the plan at six month intervals.

The IFSP shall be in writing and contain:

- A statement of the infant or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development
- A statement of the family's resources, priorities, and concerns

5. Procedural Safeguards

Administrative complaints may be filed at any time with the lead agency (DDS) and parents have the right to use mediation (also at any appropriate time) the same as applies to children ages three to twenty one. Any party unsatisfied with the attempted resolution of the complaint shall have the right to file a complaint in a state court of competent jurisdiction or in the appropriate United States District Court. During the infant and toddler process, parents have the right to confidentiality of personally identifiable information, including the right to written notice as to the exchange of such information among agencies. Parents also maintain the right to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service without jeopardizing other services allowed by law. Of course, parents must be given the opportunity to examine records related to the screening, assessment, eligibility and development of IFSP. During the proceedings allowed by the procedural safeguards, the infant or toddler shall continue to receive appropriate early intervention services, unless the parents and agency agree otherwise (the "stay put" provision).

6. Interagency Coordinating Council

The duties and responsibilities of the Interagency Coordinating Council shall be to advise and assist the lead agency, Developmental Disabilities Service (DDS) in Arkansas, in the performance of its responsibilities, particularly the identification of the sources, physical and other support for services for early intervention programs. It will advise and assist DDS regarding the transition of toddlers with disabilities to preschool and to prepare and submit an annual report to the Governor on the status of early intervention programs for infants and toddlers with disabilities.

The Coordinating Council shall be composed as follows:

- Not less than one member shall be from the agency responsible for the state Medicaid program
- Not less than one member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths
- Not less than one member shall be a representative from the state child welfare agency responsible for foster care
- Not less than one member shall be a representative from the state agency responsible for children's mental health

E. REFERRAL

If it is believed that a child might require special education, the first step is referral. Referral is made for the purpose of compiling information about a child

Other persons with relevant information regarding the child may attend the referral conference, including the child. These individuals are considered the student's team. During the referral conference, the school is required to inform the parents of their rights and decide whether an evaluation of the student is required.

If the parent or other team members have acknowledged that the student may need specialized testing, this should be requested at the conference. The school district must notify the parents in writing if it intends to begin or to change the child's identification as a child with a disability, to begin an evaluation, or to begin to change the child's placement. The district must notify the parents of any changes in the child's program. If the district refuses to do any of these things, it must also notify the parents. The notice must fully explain the parent's rights of what the district is doing or refusing to do with an explanation of why and a description of any other options considered and the reasons they were rejected.

If the referral conference decision is to evaluate, it may be necessary to initiate a temporary placement for the student if agreed upon by the parent and the school district.

To initiate the entire process, a letter should be sent to the principal requesting referral of the child for special education testing. A request should be made for a conference and supporting medical and other records may be attached. In any case, all records should be brought to the conference. If the child is age 0 – 2 the letter should be addressed to the appropriate Early Intervention Case Service Coordinator listed in Appendix III. If the child is age 3 – 4 the letter should be addressed to the relevant Education Cooperative also listed in Appendix III.

F. EVALUATION 34 C.F.R. §§ 300.300 – 311

The purpose of evaluation is to determine if the child has a disability which adversely affects educational performance and if the child also needs specially designed instruction. Evaluation information is utilized in program planning, including the needs for related services. Evaluations must be completed within 60 calendar days of the referral conference decision notification to the parents.
[1414(a) 301(b) Referral]

The evaluation should include information from the school, the home, and relevant community sources. It is important to measure the child's performance in a variety of settings. Evaluations may be specialized or comprehensive, although it should be borne in mind that the child should be tested for all disabilities that may affect educational performance.

a. Comprehensive Evaluation

The components of a comprehensive evaluation should include all measures necessary for determining the presence of a disability and whether the disability has an adverse effect on educational performance.

initial evaluation and before any provision of special education and related services to the child. The district is required to at least make reasonable efforts to obtain the informed consent from the parent for this initial evaluation. If the parent fails to respond or refuses to consent to services, the district will not violate its obligation to provide a free appropriate public education if it declines to pursue the evaluation. However, the district is required to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation. If a parent of a child who is home schooled or placed in a private school by the parent, at the parent's expense, does not provide consent for initial evaluation or a re-evaluation or the parent fails to respond to a request to provide consent, the district is prohibited from using consent override by due process procedures and is not required to consider the child eligible for services under the requirements relating to parentally- placed private school children with disabilities. Reasonable efforts must, of course, be expended for obtaining informed consent and the district must document its attempt to obtain that consent. Consent for evaluation is not to be construed as consent for placement for receipt of special education.

If the evaluation is to go forward, the school district shall:

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents
- Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or to determine an appropriate educational program for the child
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors

The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, and motor abilities. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related service's needs, and assistive technology, whether or not commonly linked to the disability category in which the child has been classified.

2. Independent Educational Evaluation (IEE) 34 C.F.R. § 300.502

An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child. The parents have a right to obtain an IEE and the school district must provide to the parents, upon request, information about where such an evaluation may be obtained and the district's criteria applicable to independent evaluations.

Regulations direct that school districts ensure that the information provided by the parents from an IEE is properly considered by the district. Results of that evaluation must be considered by the district in any decision with respect to the revision of FAPE. The IEP team is required to consider that evaluation. The

with the child's age in one or more of the following areas:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skills
- Reading fluency skills
- Reading comprehension
- Mathematics comprehension
- Mathematics calculation
- Mathematics problem solving

When Congress reauthorized IDEA 2004, they changed the law about identifying children with specific learning disabilities. Schools will "not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability. " What is Response to Intervention (RTI)? How will these new practices affect struggling children who have not yet been identified with specific learning disabilities? How will this affect the millions of children who have been identified with specific learning disabilities and who are receiving special education services? The devil is in the details. The success of Response to Intervention will depend on whether it is appropriately implemented by highly-trained professionals - and this is likely to be a problem.

A State must adopt, consistent with 34 CFR 300.309, criteria for determining whether a child has a specific learning disability as defined in 34 CFR 300.8(c)(10). In addition, the criteria adopted by the State:

- Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10)
- Must permit the use of a process based on the child's response to scientific, research-based intervention
- May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in 34 CFR 300.8(c)(10)

A public agency must use the State criteria adopted pursuant to 34 CFR 300.307(a) in determining whether a child has a specific learning disability.

[34 CFR 300.307] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

a. Require additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in 34 CFR 300.8, must be made by the child's parents and a team of qualified professionals, which must include:

- The child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or for a child of less than school age, an individual

the group must consider, as part of the evaluation described in 34 CFR 300.304 through 300.306:

- Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel
- Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 34 CFR 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 34 CFR 300.306(a)(1):

- If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 34 CFR 300.309(b)(1) and (b)(2)
- Whenever a child is referred for an evaluation.

[34 CFR 300.309] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

c. Describe the required observation.

The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

The group described in 34 CFR 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to:

- Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation
- Have at least one member of the group described in 34 CFR 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 34 CFR 300.300(a), is obtained.

In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

[34 CFR 300.310] [20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)]

d. Specify documentation required for the eligibility determination.

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in 34 CFR

warrant a re-evaluation, it must then take place. The re-evaluation may not occur more than once a year, unless the parent and the school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a re-evaluation is unnecessary. If a parent refuses to consent to a re-evaluation, the district may, but is not required to, pursue the re-evaluation by means of hearing or mediation. The district is, of course, required to make reasonable efforts to obtain parental consent.

G. INDIVIDUALIZED EDUCATION PROGRAM (IEP)
34 C.F.R. §§ 300.320 – 328

1. The Document

An IEP is a written statement for each child with a disability that is developed, reviewed and revised as a result of a meeting, and must include:

- A statement of the child's present level of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum or, for pre-school children, how the disability affects the child's participation in appropriate activities
- A statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the disability
- A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward the annual goals will be provided
- A statement of the special education and related services and supplementary aids and services to be provided to the child, and a statement of program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals
- An explanation of why it is determined that the child will not participate with non-disabled children in the regular education environment
- A statement of individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child

must also contain the services needed to assist the child in reaching those goals equating courses of studies. (The previously referenced age of 14 has been eliminated.)

In general, parents should recognize that a child's IEP must include a statement of the child's present level of academic achievement and functional performance based on objective data from assessments. The IEP must also include a description of how the child's progress toward meeting the annual goals will be measured and when there will be periodic reports on the progress the child. The IEP must include a statement of special education and related services and a statement of the program modifications or supports to be provided by school personnel. There must be individual appropriate accommodations included in the IEP that are necessary to measure the academic achievement and functional performance of the child. In developing the IEP, the IEP team shall consider the child's strengths, enhancement of the child's education, the results of the initial evaluation or most recent evaluation, and the child's academic, developmental, and functional needs.

2. The IEP Conference

The IEP Team is composed of the following persons:

- Parents
- Not less than one regular education teacher (if the child is, or maybe, participating in the regular education environment)
- Not less than one special education teacher, or when appropriate, not less than one special education provider
- A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, who is knowledgeable about the general education curriculum and the availability of resources; an individual who can interpret the instructional implication of evaluation results
- Other individuals, at the discretion of the parent or the district, who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- When appropriate, the child

The IEP is the MOST important document in determining the services your child needs and has a right to receive under IDEA. Without an IEP special education and related services are not to be provided. It is imperative that you gain as much information as you can regarding the IEP process. Parents can often feel intimidated going into an IEP meeting, so it is important to remember KNOWLEDGE is POWER and allows you to become an effective advocate for your child.

a. Identify the members of the IEP Team.

The public agency must ensure that the IEP Team for each child with a disability includes:

d. Require that the notice inform parents of other IEP Team participants.
The notice required under 34 CFR 300.322(a)(1) (regarding an IEP meeting), among other things, must inform the parents of the provisions in 34 CFR 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and 34 CFR 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA).
[34 CFR 300.322(b)(1)]

e. Provision for amending the IEP without another meeting and with Parental consent.
In making changes to a child's IEP after the annual IEP Team meeting for a school year, the **parent** of a child with a disability and the **public agency** may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

If changes are made to the child's IEP in accordance with 34 CFR 300.324(a)(4)(i), the public agency must ensure that the child's IEP Team is informed of those changes.
[34 CFR 300.324(a)(4)] [20 U.S.C. 1414(d)(3)(D)]

Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in 34 CFR 300.324(a)(4), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.
[34 CFR 300.324(a)(6)] [20 U.S.C. 1414(d)(3)(F)]

f. Encourage consolidation of IEP meetings.
To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
[34 CFR 300.324(a)(5)] [20 U.S.C. 1414(d)(3)(E)]

g. Provide for the review and, as appropriate, revision of the IEP.
Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP, as appropriate, to address:

- Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate
- The results of any reevaluation;
- Information about the child provided to, or by, the parents, as described under 34 CFR 300.305(a)(2) (related to evaluations and reevaluations)
- the child's anticipated needs
- Other matters.

H. RELATED SERVICES

If the student is found in need of special education services, appropriate related services must be provided to meet the student's need as indicated in the IEP. "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.

The need for related services is determined by an appropriate evaluation of the student's needs. Therefore, if it is felt that the student is in need of specific related services, a request for an evaluation in that specific area should be made. The IEP should state each needed related service, the date of initiation of the service, and the anticipated duration of the service. It should also state how many times per week or how many minutes or hours the service will be rendered and by whom. The IEP should also provide whether the service will be conducted on a one-to-one basis, in a group, or by consultation with a classroom teacher.

Related services include:

- Early identification and assessment of disabilities in children
- Speech/language pathology and audiology services (related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or replacement of the device)
- Assistive technology services
- Interpreting services
- Psychological services
- Physical and occupational therapy
- Recreation, including therapeutic recreation;
- Counseling services, including rehabilitation counseling, orientation and mobility services and medical services for diagnostic or evaluation purposes
- School health services and school nurse services designed to enable a child with a disability to receive a free appropriate public education
- Social work services in schools
- Parent counseling and training

Related services may include medical services for diagnostic and evaluation purposes only. Other medical services may not be the responsibility of the school district. The regulations distinguish between "school health services" which are provided by a qualified school nurse or other qualified person, and "medical services" which are provided by a licensed physician.

"Rehabilitation counseling services", means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration

Because assistive technology is an important ingredient in most programs involving disability, Disability Rights Center of Arkansas has a priority: "disability rights advocacy for individuals to acquire or maintain devices or services that empower them to be successful in employment, community life and independent living." The priority is based on evidence that children and adults with disabilities continue to encounter barriers to access to services and to independent living due to denial of or unawareness of assistive technology devices or services. Technology advances are unknown to many families and individuals with disability, and many professionals are not qualified or trained to provide adequate services. Barriers exist to the provision of timely, appropriate assistive technology assessments in schools, accommodations in higher education, in the workplace and for inclusive community living. For more information as to existing technology programs, contact should be made with ICAN and/or DRA. (ICAN is a Federally funded program of Arkansas Rehabilitation Services designed to make technology available and accessible.)

Therefore, reference to assistive technology devices and services are integral to discussion of all laws prohibiting discrimination on the basis of disability. The statutory description of "assistive technology devices and services" is noted above. However, parents should bear in mind that a "device" or "service" can be any item or services, however purchased or provided, will qualify so long as they will assist in providing the child with FAPE. As to its educational context, assistive technology services include:

- Evaluating a child's needs, including a functional evaluation in the child's customary environment
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices
- Coordinating or using other therapies, interventions, or services with assistive technology devices (such as those associated with existing education and rehabilitation plans and programs)
- Training or technical assistance for the child with a disability, or, if appropriate, the child's family
- Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are substantially involved in the major functions of that child

The decision as to whether the child requires assistive technology devices and services is made on a case by case basis in connection with the development of the child's IEP. If the child requires assistive technology to receive a free appropriate public education, those services must be provided. Therefore, the IEP team must determine the child's needs for assistive technology devices or services, determine those devices that will facilitate the student's education, and list them in the IEP. The district must then provide them to the student at no cost

education and related services that are provided at public expense, under public supervision and direction and without charge and meet the standards of the state education agency as well as IDEA in a placement that is the least restrictive environment appropriate for the child.

A state funding mechanism cannot be sued to distribute funds on the basis of the type of setting in which a child is placed that will result in the failure to provide the child with a disability with FAPE according to the unique requirements of the child.

Arkansas law is entirely consistent with Federal law in that the school district must ensure, to the maximum extent appropriate, students with disabilities in public or private institutions or other facilities are educated with children who are nondisabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. In determining the educational placement (including preschool) the district must ensure that:

- The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- The decision must be made in conformity with the LRE provisions of IDEA regulations
- The child's placement is determined annually
- The placement is based on the child's IEP
- The placement is as close as possible to the child's home, unless otherwise agreed
- Unless the IEP provides for other arrangements, the child must be educated in the school that he or she would attend if nondisabled, unless the parent agrees otherwise
- In determining LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs
- A child with a disability is not removed from education in an age-appropriate regular classroom solely because of needed modifications in the general education curriculum. The student is entitled to the modifications if necessary to provide FAPE

The district must arrange for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities necessary to afford children with disabilities an equal opportunity for participation. These nonacademic and extracurricular services and activities may include: counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the district and assistance in making

HOMEBOUND

INSTRUCTION

3. Residential Setting

The LRE requirements extend to public and private institutions and may require a memorandum of agreement or special implementation procedures between the state and the institutions. (The State of Arkansas, Department of Education, has many such interagency agreements with institutions, available for public inspection.)

Arkansas law provides:

- The district where a residential facility (other than state operated) is located is responsible for each student's education if the child is placed there for non-educational reasons
- If the student with disabilities is placed in a residential facility (other than state operated) for psychiatric diagnostic/emergency services (inpatient, 24 hour, under the care of a physician, in a Department of Health and Human Services (DHHS) licensed facility), the home district is responsible for the child's education through 60 calendar days. The responsibility becomes that of the receiving district on the 61st day
- If the student is placed for educational purposes, the placing (home) district is responsible for FAPE
- If the student is placed in a facility for educational purposes by the parent, the parent may petition the home district for the provision of education; or if the student is in a state facility, the facility is responsible when the student is in residence for more than 60 days

4. Transfers

Arkansas law enables any student to attend a public school in Arkansas in a district other than the one in which the student resides, subject to certain conditions. A student may apply to a district provided that the transfer would not adversely affect the district's racial balance. The receiving district must agree in advance to participate in the transfer program as provided by Arkansas statute. To begin the process, the student's parent or guardian must submit an application to the non-resident district no later than April 17 in order to attend school for the fall semester. A school board must adopt a resolution determining it will or will not participate in the legislation allowing transfers. Those school boards wishing to participate are required to adopt specific standards for accepting and rejecting applicants.

Permissible decisional criteria include the capacity of a program, class, grade level or school building. The receiving district is not required to add teachers or classrooms. The districts (sending, receiving, or both) may participate in the

Books, curricula or materials are not required to be furnished by the Arkansas Department of Education, local school districts, or education service cooperatives. It is the responsibility of the parents/guardians to purchase all books and other materials used in home schooling.

Parents or guardians who plan to home school must file a written notice by completing and returning a Notice of Intent and Waiver forms to the public school superintendent's office. Parents or guardians must sign a waiver acknowledging that the State of Arkansas is not liable for the education of their children during the time that the parent chooses to home school. The Notice of Intent and Waiver forms are valid for the entire school year, and are available from the state or the school district.

Home schools are not accredited by the Arkansas Department of Education. There are no grades, credits, transcripts or diplomas provided by the Department, educational service cooperatives, or the local school district.

It is the policy of the State Board of Education that, where appropriate and feasible, school districts provide a genuine opportunity to students with disabilities who are home schooled to access special education and related services from the district where they reside. However, the policy is not to be construed as conferring any of the IDEA procedural protections and rights to those students and their parents/guardians.

L. EXTENDED YEAR SERVICES 34 C.F.R. § 300.106

1. Requirements

Each district must ensure that extended school year services are available as necessary to provide FAPE. Those services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE. In making the determination, the district may not limit extended year services to particular categories of disability or, unilaterally, limit the type, amount or duration of extended year services. The extended year program should be provided when it is determined by the IEP team that the student has regressed (a decrease in the level of performance as a result of an interruption of services), or is predicted to regress. If the regression is to such a substantial degree in a critical area that recoupment (ability to regain the level of skills prior to the interruption of services) of those skill losses following the summer break would be unlikely or would require an unusually long period of time. Extended year services are appropriate to prevent significant regression. The issue of a need for extended year services may be raised at any time and must be determined on an individual basis by the IEP team.

2. Services

The need for extended year services is not based strictly on a

vocational education, integrated employment (including supported employment); continuing and adult education, adult services, independent living, or community participation

- Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation
[34 CFR 300.43 (a)] [20 U.S.C. 1401(34)]

2. Requirements

We hope you have been working closely with your child's IEP team through high school to ensure that appropriate transition goals have been established and your child's progress toward these goals has been measured and documented. It is during the transition phase of your child's education where this teamwork should really begin to show.

IDEA 2004 requires Transition Services to be "results-oriented" to "facilitate the child's movement from school to post school activities . . ." The law requires that the IEP Transition Services be in place by (before) the child's 16th birthday. The following are two checklists and some advice to help your child make a successful transition from school to employment or further education.

a. IDEA 2004 Transition Checklist

IDEA 2004 describes the required components of the transition plan. During your child's high school years, it is essential that the IEP team adhere to these requirements:

- The student must be invited to participate in IEP meetings to discuss his/her goals for life after high school
- You may request several IEP/Transition Planning meetings during the school year
- You may invite representatives of local agencies to these IEP meetings to discuss transition goals and services to support those goals
- The IEP, including the transition plan, should be based on person-centered planning, and reflect the student's interests and skills
- The work experiences or "community based work assessments" (CBWAs) chosen should be based on the student's interests and abilities. Students should NOT be placed in a community based work assessment simply because it is available
- Any placement should help the student develop skills in a setting that is of personal interest to him/ her and where his/her unique abilities can be successfully utilized and improved with job

and file the necessary paperwork with the Office of Vocational Rehabilitation ahead of time. Request that a Vocational Rehabilitation counselor attend the IEP meeting no later than spring of the your child's last year in high school

- Discuss your child's transportation needs. If s/he will need assistance getting to and from work, request and fill out applications for public transportation services
- Request information about social/recreational opportunities for young adults with disabilities in your community. Ask for their contact information
- Request information about post-high school training programs at local vocational schools, community colleges, business schools, and state-affiliated training schools

When your child graduates from high school, you and your graduate should celebrate accomplishments -- and the transition to adulthood. With the new emphasis on transition planning in IDEA 2004 and online resources such as www.transitionmap.org, more students with disabilities are preparing for further education, employment and independent living as productive, active members of their communities.

3. Transfer of Rights

Beginning not longer than one year before the child reaches the age of eighteen (18), the IEP must include a statement that the child has been informed of his or her rights under the Act that will transfer to the child on reaching the age of majority, in Arkansas age 18. The state is required to establish a procedure for appointing the parent of a child with a disability, or if the parent is unavailable, another appropriate individual, to represent the educational interests of the child throughout the child's eligibility under the IDEA if it can be determined that the child does not have the ability to provide informed consent.

N. QUALIFIED PERSONNEL 34 C.F.R. § 300.18

1. Highly Qualified Teachers

IDEA now requires persons employed as special education teachers in elementary or secondary schools be highly qualified by no later than the end of the 2005-2006 school year. The Act adopts the definition of "highly qualified" as used in the No Child Left Behind Act and requires that special education teachers obtain full state certification as a special education teacher or pass the state special education teacher licensing examination, and hold a license to teach in the state as a special education teacher. Regulations preclude teachers for whom the special education certification or licensure requirements were waived on an emergency, temporary, or provisional basis for meeting the definition of a highly qualified special education teacher. Teachers employed by public charter schools or by private elementary and secondary schools are not subject to these requirements.

For related services personnel and paraprofessionals, qualifications must: be consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to professional discipline;

- Ensure that related services personnel who deliver services in their discipline or professions meet the qualification requirements of IDEA and have not have certification or licensure requirements waived on an emergency, temporary or provisional basis
- Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation or written policy, and meeting the requirements of IDEA to be used to assist in the provision of special education and related services.

O. PRIVATE AND CHARTER SCHOOLS
34 C.F.R. §§ 300.129 – 147; 300.209

1. Private Schools

a. Parentally Placed Students

To the extent consistent with the number and location of children with disabilities in the state who are enrolled by their parents in private schools, IDEA provides for the participation of those children in the program assisted or carried out under IDEA by providing for such children with special education. Money expended by the school district is limited to the Federal contribution and does not cover special education and related services (including materials and equipment) unless such services are secular, neutral, and non-ideological. State and local funds may supplement, but in no case supplant, the proportionate amount of Federal funds required to be expended. Highly qualified teacher requirements do not apply to private school teachers hired or contracted by school districts to provide equitable services to parentally-placed private school children with disabilities.

To ensure timely and meaningful consultation, a school district shall consult with private school representatives and parents of parentally placed private school children with disabilities during the design and development of special education and related services, including:

- The Child Find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers and private school officials will be informed of the consultation process
- The consultation process among the school district, private school officials and parents, must include how the process will operate throughout the school year to ensure that parentally placed children can meaningfully participate in special education
- By whom special education and related services will be provided,

The State Department of Education must ensure that a child with a disability who is placed in or referred to a private school or facility by the school district or other state agency:

- Is provided special education and related services in conformance with an IEP at no cost to the parents
- Is provided an education that meets the standards that apply to education provided by the State and school districts including the requirements of IDEA
- Have all the rights of a child with a disability who is served by a school district or a public agency, except for the requirement for "highly qualified teachers."

In meeting these requirements, the State must monitor compliance through procedures such as written reports, on-site visits and parent questionnaires. The State is also responsible to disseminate copies of applicable standards to each private school and facility to which a school district has referred or placed a child with a disability. The Arkansas Department of Education must provide an opportunity for those private schools and facilities to participate in the development and revision of State standards. While the Arkansas Department of Education has the primary responsibility for the provision of education to all students, other agencies may by law, also have educational responsibilities (DHHS, Rehabilitation, for example). These other state agencies therefore may be obligated to provide or pay for some or all the cost of FAPE for any child with a disability in the State. The Governor or a designee of the Governor shall ensure that an Interagency Agreement or other mechanism for interagency coordination is in effect between each public agency responsible for education and the state educational agency in order to ensure that all services needed to ensure FAPE are provided.

c. Remedies

A private school official has the right to submit a complaint to the state that the school district:

- Did not engage in consultation that was meaningful and timely
- Did not give due consideration to the views of the private school officials.

If the private school official is dissatisfied with the decision of the state, the official may submit a complaint to the United States Department of Education.

2. Charter Schools

Children with disabilities who attend public charter schools and their parents retain all rights under IDEA. If the charter school is a public school of the school district, the district is responsible to serve all children with disabilities attending those charter schools in the same manner as the district serves children with

P. DISCIPLINE 34 C.F.R. §§ 300.530-536

1. Behavior

If you have a child with a disability whose behavior is impeding his/her learning **you** need to learn what the law requires IEP teams to do when children with disabilities have behavior problems.

The IDEA regulations and commentary to the regulations were published in August 2006. The law, federal regulations and commentary describe what IEP teams must do when a child's behavior "impedes the child's learning or the leading of other children." Do not assume that your child's IEP team is knowledgeable about these requirements.

The questions and answers about the requirements for meeting the needs of children with behavior problems (below) are taken from IDEA 2004, the special education regulations, and the Commentary.

1. If a child's behavior impedes the child's learning or that of others, must IEP Teams base positive behavioral interventions and support on a functional behavioral assessment?

Yes. Conducting functional behavioral assessments typically precedes developing positive behavioral intervention strategies.

2. Does "consideration of special factors" address the behavioral needs of children with disabilities in the IEP process?

Yes. The IEP Team determines whether a child needs positive behavioral interventions and supports. If the behavior of a child impedes the child's learning or the learning of other children, the IEP Team must consider the use of positive behavioral supports, supports, and other strategies to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i), 34 C.F.R. § 300.324(a)(2)(i))

3. If the child's behavior impedes the child's learning or that of others, must the IEP Team develop a plan to address these problem behaviors?

Yes. If the child's behavior impedes his learning or the learning of others, the IEP team must include strategies, including positive behavioral interventions, supports, and other strategies to address that behavior. If the child's behavior that impedes learning is not addressed in the IEP, the IEP Team must review and revise the IEP to ensure that the child receives appropriate positive behavioral interventions and supports and other strategies. (34 C.F.R. § 300.324(a)(2)(i) and 34 C.F.R. § 300.324(a)(3)(i).

4. Must school districts train teachers regarding the use of positive behavioral interventions and support?

Yes. School districts must provide teachers with high-quality professional development, including the use of scientifically based instructional practices. School districts must ensure that personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of

special education or related services under § 300.111 (related to child find).

3. Procedure

School personnel may remove a child with a disability who violates a code of student conduct from a current placement to an appropriate interim alternative educational setting, or suspension for not more than 10 school days. School personnel may consider any unique circumstance on a case by case basis when determining whether to order a change in placement. If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities shall apply. These rules will be applied in the same manner and for the same duration as they apply to children without disabilities.

A child with a disability who is removed from current placement, irrespective of whether the behavior is determined to be a manifestation of, will continue to receive appropriate educational services. The district will ensure that the child will continue to receive FAPE in the general education curriculum, although in another setting, and progress toward meeting the goals set out in the IEP.

Within 10 school days of any decision to change the placement of a child with a disability, the district, the parent, and relevant members of the IEP team shall review all relevant information in the student's file, any teacher's observation, and any other relevant information to determine if the conduct in question was caused by or had a direct or substantial relationship to the child's disability, or if the conduct was a direct result of the district's failure to implement the IEP. If it is determined that the conduct was a manifestation of the child's disability, the IEP Team will conduct a functional behavioral assessment, and implement a Behavioral Intervention Plan.

School personnel may remove a student to an interim alternative educational setting for not more than 45 days without regard to whether the behavior is determined to be a manifestation of the disability in cases where a child:

- Carries or possesses a weapon on school premises, or at a school function
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of controlled substances while at school or on school premises or at a school function
- Has inflicted serious bodily injury upon another person while at school or at a school function

The parent of a child who disagrees with any decision regarding placement, or the manifestation determination, or a school district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing. The Hearing Officer may order a

3. No Child Left Behind (NCLB)

By the 2013 – 2014 school years, NCLB requires that all children will be at a proficient level on state testing. Beginning in fall 2002, the districts were required to report the scores for statewide testing to parents. The scores are broken into four subgroups, including children with disabilities. The information is to inform parents whether the school has been successful in teaching all groups of children. From this “report card”, the parents will be able to compare their school with report cards from other schools in the district and in the state. Beginning in 2005, the district must test all children in grades three through eight every year in math and reading. By fall 2007, science assessments are required. These test scores will determine if the school is making Adequate Yearly Progress (AYP) toward the goal of proficiency for all children by the 2013 – 2014 deadlines. “Proficiency” means that the child is performing at average grade level. All subgroups of children, including children with disabilities, as well as the school as a whole, must meet the AYP goal or the school will fail.

If the school receives Title I grants, and if that school fails to meet the AYP goal for two consecutive years, all the children in the school may choose to attend a non-failing school in the school district. If the school (receiving Title I funds) fails to reach the AYP goal for three years, the school will provide supplemental services to the children remaining there. These supplemental services include tutoring, after school programs, and summer school. A parent may choose a tutor, or other service provider, from a state approved list. Those services will be provided at no cost. If the school fails to meet its AYP goal for four years, the school may replace school staff responsible for the failure. The school may also implement a new curriculum. If the school fails for five consecutive years, the school district may replace the principal and staff and contract with a private firm to run the school. The school may also open as a charter school. If these options are unsuccessful, the state will take over management of the school.

4. Individualized Education Program

- IEPs must include a description of benchmarks for all children with disabilities. Short term objectives are only for children who take alternate assessments aligned to alternate achievement standards
- IEPs must include a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on a state wide and district wide assessment
- IEPs must, if the IEP Team determines that the child shall take an alternate assessment, provide a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.

R. CONFIDENTIALITY OF INFORMATION 34 C.F.R. §§ 300.610-627

or misleading, or violates the privacy or other rights of the child, the parent may request that the school district change it. The district must either change the statements in a reasonable period of time or formally refuse to do so. If it refuses, the school must inform the parent of the refusal and advise them of the right to a hearing to challenge information in the child's educational records. If, following hearing, the school district's information is held to be accurate; the parent has the right to add a statement to the record commenting on the information or setting forth any reason for disagreeing with the decision.

The school district is responsible for protecting the confidentiality of the student's education records by:

- Permitting parents to see only that information which relates to their own child when records contain information on more than one child
- Requiring the parent's consent before the education records are given to anyone not involved in the student's education
- Requiring the parent's consent before using the records for any purposes other than those related to providing special education and related services
- Not releasing information from education records to participating agencies without parental consent unless authorized to do so under Federal law
- Adhering to state policies and procedures which apply in the event that the parent declines to give this consent and the school district feels the records should be given to the person requesting them
- Protecting the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages
- Assign an individual who is responsible for ensuring the confidentiality of records
- Guaranteeing that all persons who collect or use such information receive training in the state's policies and procedures regarding confidentiality
- Keeping for public inspection a list of names and positions of those employees permitted access to the records
- Informing the parent when confidential information is no longer required to provide educational services; and
- Destroying the information at the parent's request, when consistent with state law. A permanent record of a student's name, address and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

3. Hearing

The school district must provide an opportunity for a hearing to challenge

- Outpatient mental and behavioral health services
- Physician services
- Podiatry
- Prescription drugs
- Preventative health care screening
- Immunizations
- Speech therapy
- Vision care

2. IDEA

A district may use Medicaid or other public insurance benefits programs to provide or pay for services required by IDEA. With regard to services required to provide a free appropriate public education, the district (1) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive an appropriate education under IDEA, and (2) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-payment incurred in filing a claim for services, but may pay the cost that the parent otherwise would be required to pay. Further, the school district may not use a child's benefits under a public insurance program if that use would (1) decrease available lifetime coverage for any other insured benefits, (2) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school, (3) increase premiums or lead to the discontinuation of insurance, or (4) risk loss of eligibility for home and community based waivers, based on aggregate health-related expenditures. Parents should remember that the State and the district are responsible for providing FAPE, and cannot evade that responsibility by claiming that insurance, including Medicaid, will not pay for a needed service.

By Arkansas statute, by May 1 of each year, the Special Education Section shall determine which school districts are under performing in the area of direct Medicaid billing. Those districts shall be directed to associate with an educational cooperative for the provision of those billing services. Of course qualified public and private providers may continue to develop and maintain Medicaid service relationships with districts.

T. SURROGATE PARENTS 34 C.F.R. § 300.519

1. Appointment

The State and school districts must have procedures in effect to protect the rights of the child whenever the parents of the child are not known, the district cannot after reasonable efforts locate the parents, or the child is a ward of the state. These procedures include the assignment of an individual to act as a surrogate for the parents. The surrogate cannot be an employee of the state educational agency, the school district, or any other agency that is involved in the educational care of the child. Normally, a foster parent is an appropriate surrogate parent unless the district has a legitimate objection. The surrogate may

The *Rowley* Court began with the finding that, according to the Act, a “free appropriate public education” consists of educational instructions specially designed to meet the unique needs of a child with a disability, supported by such services as are necessary to permit the child “to benefit” from the instruction. (The instruction is to consist of individualized services to meet the additional needs of children with disabilities.) The “benefit” language became the guiding principle of the *Rowley* doctrine. The Court concluded that there was no Congressional intent to achieve strict equality of opportunity or services for children with disabilities. The Court reasoned that a requirement that states provide “equal” educational opportunities would present an unworkable standard requiring impossible measurements and comparisons. In other words, the Court’s majority did not believe that there was an implication of Congressional intent to achieve strict equality of opportunity of services. Thus, the requirement that a child with disabilities’ “benefit” from specially designed instruction is more of a floor than a ceiling. The Court held:

We hold that it satisfies [free appropriate public education requirements] by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet state educational standards, must approximate the grade levels used in the state’s regular education, and must comport with the child’s IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act, and if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Therefore, in actions brought under IDEA the parties are limited primarily to two issues:

- Has the state complied with the procedures of IDEA?
- Is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?

The responsibility for formulating the education to be accorded to a child with a disability, and for choosing the educational method most suitable to the child’s needs, was left by IDEA to state and local education agencies in cooperation with the parents or guardian of the child. Courts have generally held that they lack specialized knowledge and experience necessary to resolve the difficult questions of educational policy. Nevertheless, courts will not rubber stamp the findings and conclusions of an educational agency where there is a violation of the procedural requirements of the Act or failure to design an appropriate IEP and provide services under that IEP reasonably calculated to provide the child with educational benefits.

the parent in mediation or alternative means of dispute resolution. If the district and parents agree on an alternative means of dispute resolution, the sixty day timeline will, of course, be extended. The State Department of Education must review all relevant information and make an independent determination as to whether the district is violating requirements of IDEA or its regulations. The decision should include procedures for effective implementation of the decision, if needed, including technical assistance activities, negotiations, and corrective action to achieve compliance with IDEA.

If the State complaint allegation is also the subject of a due process hearing, the State must set aside the complaint until the conclusion of the hearing procedure. If an issue raised in the complaint filed after a hearing has been previously decided in a due process hearing involving the same parties, the due process hearing is binding on that issue.

State complaints may include a request for monetary reimbursement and compensatory services where appropriate. These requests are examples of corrective actions that may be appropriate to address the needs of the child. Where the state has an appropriate procedure (as Arkansas does currently), complaints may also be filed to enforce a due process hearing decision. Thus, the complaint would seek to implement the terms of the decision when the district has failed to accept the directions given by the hearing officer. Complaints must be served on the school district involved, and there must be an opportunity for the district to respond to the complaint and, if feasible, move to mediation.

While the issues raised in due process complaints and state complaints overlap, the state complaint procedure is normally used for the district's failure to provide appropriate services, including corrective action appropriate to address the needs of the child and appropriate future provision of services for all children with disabilities. In any event, the State must explain the differences between the due process complaint and the state complaint to parents. Parents should seek advice as to entering into either type of administrative litigation.

W. DUE PROCESS 34 C.F.R. §§ 300.500 – 520

1. Notice

If the school district proposes to initiate or change the identification, evaluation, or educational placement of the child for the provision of FAPE, or refuses to initiate or change the identification, evaluation, or educational placement for the provision of FAPE, the district must give notice to the parents prior to taking such action or refusing to take such action. The notice required must include:

- A description of the action proposed or refused by the district;
- an explanation of why the district proposes or refuses to take the action
- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action; a statement that the parents have protection under the procedural

All districts shall ensure procedures to allow parties to disputes involving any matter arising under IDEA to resolve disputes through a mediation process. That process should ensure that it is voluntary on the part of the parties and is not used to deny or delay a parent's rights to a hearing on a due process complaint. The mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The new regulations would permit employees of the school district that are not involved in the education or care of the child involved in the dispute being qualified to serve as mediators.

Mediation is available to resolve any dispute, not just when a hearing has been requested, as was the case under the prior law. IDEA 04 has added opportunities to resolve disputes when a hearing has been requested, such as through the resolution process. The state maintains a list of individuals who are qualified mediators and knowledgeable in laws relating to the provision of FAPE. The State Department of Education will select mediators on a random, rotational, or other impartial basis. The State bears the cost of the mediation process, including the cost of meetings. All sessions in the mediation process must be scheduled in a timely manner and will be held at a location that is convenient to the parties to the dispute. The district should have procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested person, including an alternative resolution entity, to encourage the use, and explain the benefits, of the mediation process. IDEA 2004 provides ample opportunity for resolution of any disagreement prior to hearing without fear that timelines will deny parents their right to the hearing. Of course, the school cannot use the process to delay orderly procedure if the parents wish to proceed to hearing.

Mediation services are also available through the UALR Law School (under contract with the Arkansas Department of Education, Special Education). An explanation of those services, along with a form request, is attached as Appendix VI.

If the parties resolve a dispute through the mediation process, the parties will execute a legally binding agreement that accurately describes that resolution. All discussions that occurred during the process will remain confidential. The agreement must be signed by both a parent and a representative of the district who has authority to bind the district. That signed mediation agreement is enforceable in any state court of competent jurisdiction or in a United States District Court. The parties to the process may be required to sign a confidentiality pledge prior to the commencement of mediation to ensure that all discussions that occur during the mediation remain confidential.

3. Multiple Complaints

If a written statement complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more or a part of the

- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for its decision
- A description of other factors that are relevant to the district's proposed or refused action. If the district or other party files the complaint, a response covering the above information must be filed within 10 days. (The Arkansas Department of Education has model forms to assist parents in complying with these procedures, Appendix VIII.) Parents are entitled to the State approved forms

Within 15 days of receiving a notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the district must convene a meeting with the parents and the relevant members of the IEP team. The meeting will include a representative of the district who has decision making authority and may not include an attorney of the district unless the parents are also accompanied by an attorney. The purpose of this meeting is to discuss the complaint and the facts that form the basis of it, so the district has the opportunity to resolve the dispute. This meeting need not be held if the parents and the district agree in writing to waive the meeting or the parents and district agree to use the mediation process. If the district has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the hearing will go forward. The timeline (60 days) for issuing the final decision begins at the expiration of this 30 day period. During the pendency if proceedings (administrative or judicial) the child will remain in the current educational placement unless otherwise agreed (the stay put provision).

If a complaint involves an application for initial services for a child who is transitioning from Part C to Part B and is no longer eligible for Part C services because the child has turned three, the district is not required to provide the parts and services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education services, then the district must provide those special education and related services that are not in dispute between the parents and the district.

5. Hearing

The due process hearing is conducted by the Arkansas Department of Education. The Hearing Officer must not be an employee of the state education agency or the district involved in the educational care of the child or a person having a personal or professional interest that conflicts with the person's objectivity at the hearing. That person must possess knowledge of, and the ability to understand, the provisions of IDEA and Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts. The Hearing Officer must possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice and must possess the knowledge and ability to render and write decisions in accordance with standard legal practice. Hearing Officers are selected at random from a list

the IDEA hearing procedures shall be exhausted. In addition, there is substantial and long standing precedent requiring administrative exhaustion if the case filed in court involves an IDEA issue. However, the United States Court of Appeals for the Eighth Circuit (covering Arkansas) has recently held that a student has the right of action for damages under Section 504 for unlawful discrimination despite the failure to exhaust administration remedies under IDEA. Advice should be sought before filing such a law suit.

Attorneys' fees are available and the Court, in its discretion may award reasonable attorneys' fees. The attorneys' fees may be collected by a parent who is the prevailing party. If the district is the prevailing party, attorneys' fees may also be assessed against the attorney of the parent, who files a complaint that is frivolous, unreasonable, or without foundation, or against the attorney of the parent who continues to litigate after the litigation clearly becomes frivolous, unreasonable, or without foundation. Attorney's fees may also be collected by the school district or the state education agency when the request for a due process hearing or further action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

The 2004 amendments, for the first time, allow attorney's fees to be collected by the district. The standards to be used in determining the allowance of fees is the same as those long applied in the ADA and the Civil Rights Act of 1964 and amendments. In order for a complaint to be judged frivolous, the parents must fail to produce evidence of an essential element of the case or lack the support of a legal basis. If the claims are without foundation, factually or legally, the complaint may be found to have been filed in "bad faith." In addition, attorneys are also subject to "Rule 11" court sanctions under Federal and State law if the case is found to be frivolous, unreasonable, or without foundation.

development of an individualized program, transportation and placement. Prior to disciplinary suspension and expulsion, an evaluation must be completed.

Section 504 and the ADA are civil rights laws. They exist to protect individuals with disabilities from discrimination for reasons related to their disabilities. However, unlike IDEA, Section 504/ADA do not ensure that a child with a disability will receive an individualized educational program that is designed to meet the child's unique needs and provide the child with IDEA procedural protections. A child with a disability is not qualified for special education services under IDEA unless the disability adversely affects education and the child needs special education and related services. Under Section 504/ADA, the child may receive protections even though not qualifying for special education under IDEA. In order to have protection under Section 504, the child must have a physical or mental impairment. The impairment must substantially limit at least one major life activity, including walking, seeing, hearing, speaking, breathing, learning, reading, writing, performing math calculations, working, caring for one's self, and performing manual tasks. Being a civil rights law providing for equal protection of individuals with disabilities, Section 504 requires meeting the needs of those persons *as adequately* as those of nondisabled persons. In theory (and often in practice), if the group as a whole is treated the same, no matter how inadequately, there is no Section 504 violation.

Because it may be that a Section 504/ADA child will not receive special education services under IDEA, the child will not have the procedural protections that are available under that statute.

However, the child under Section 504/ADA may receive accommodations and modifications that are not available to children who are not disabled. The prohibitions against discrimination include:

- Denying a student the opportunity to participate in or benefit from a benefit or service
- Providing an opportunity to participate or benefit that is unequal to that provided others
- Providing a benefit or service that is not as effective as that provided to others
- Providing lower quality benefits, services or programs than those provided to others
- Providing different or separate benefits or services, unless it is necessary to provide benefits or service that are as effective as those provided to others

To determine if a student has a disability, school districts must evaluate the student and make a placement decision. This decision should include documented information from a variety of sources and be considered by a group of persons knowledgeable about the child. Also considered should be the meaning of the evaluation data and the placement options available. If it is determined that the student has a disability, the student is entitled to regular or special education and

- Necessary assistive technology devices and/or services
- Reassignment of classes or other services to accessible sites
- Assignment of aids and auxiliary services
- Alteration of existing facilities
- New construction

Each program or activity, when viewed in its entirety, must readily be accessible to persons with disabilities. Title II regulation differs somewhat from Section 504 by requiring the use of specific auxiliary aids in some circumstances. School districts that communicate by telephone are required to use telecommunications devices for the deaf (TDDs) or equally effective telecommunications systems when communicating with individuals (parent or student) with impaired hearing or speech.

Title II does not require a school district to take any action that the district can demonstrate would result in a fundamental alteration in the nature of a service, program or activity, or in undue financial or administrative burdens. That regulation is taken from Section 504 and requires a decision being made by the head of the agency or by his or her designee after considering all resources available for use in the funding and operation of the program, service or activity. The decision must be accompanied by a written statement of the reasons for reaching that conclusion. Even if an action is deemed to result in an undue burden, the school district must still take other appropriate steps, where possible, to ensure that the needs of students with disabilities are being met. Providing program accessibility should not ordinarily result in undue burdens for most school districts.

Title III of the ADA prohibits discrimination by public accommodations. Therefore, parents' and students' rights to be free from discrimination apply to private schools as well as public. Private schools must eliminate unnecessary eligibility standards that deny access to students with disabilities. They must make reasonable modifications in policies, practices and procedures that would otherwise deny access to students with disabilities, unless a fundamental alteration in the nature of the program would result. The private schools are also required to furnish auxiliary aids such as interpreters, note takers or readers when necessary to ensure effective communication. Title III does not cover religious institutions.

2. Free Appropriate Public Education

While Section 504 does not accord the student with disabilities all of the procedural protections of IDEA, the public school must provide a free appropriate public education to each student eligible under Section 504 regardless of the nature or severity of the disability. An "appropriate education" is the provision of regular or special education and related aids and services that are designed to meet individual educational needs as adequately as the needs of nondisabled persons and are based upon adherence to procedures that satisfy Section 504 regulations. If the school district implements an individualized education program in accordance with IDEA, it will meet the standard established in Section 504 regulations.

education, then students with disabilities have the right to an education based on the same standards. To do otherwise would be a failure to provide comparable benefits and services as required by Federal law.

Section 504 and ADA regulations address this point specifically. At the same time, it is true that the method of teaching and the curriculum may need to be modified as a reasonable accommodation or as a supplementary aid or service necessary for maximum feasible participation in regular education. As in IDEA, all decisions in this respect must be made on an individual basis. The district (or the state), may not adopt policies and practices which limit opportunities for students with disabilities to meet the standards established by the state or local school districts. Therefore, policies and practices must be examined to prevent discrimination against such children.

5. Procedural Safeguards

Procedural safeguards which apply to the identification, evaluation, and placement process include: notice of non-discrimination policy; an opportunity to examine relevant records; an individual program review procedure; an impartial hearing with an opportunity for participation by the student's parents or guardian; and representation by counsel. School districts are required to have a Section 504 and an ADA Coordinator to coordinate compliance and adopt a grievance procedure with appropriate due process standards for prompt resolution of complaints.

Compliance with the procedural safeguards provisions of IDEA satisfies Section 504/ADA requirements. Wholly apart from the grievance procedure and opportunity for an impartial hearing, parents may file complaints directly with the Federal government. Complaint Procedure under Section 504 and ADA:

All Section 504 complaints against education agencies will also be Title II ADA complaints. A complaint may be filed with the Office for Civil Rights (OCR) in Dallas. The complaint should include the following:

- The identification of the complainant (parent, attorney, etc.)
- A detailed description of the child's disability or disabilities (parents should have obtained all relevant medical reports as well as previous educational evaluations)
- A description of the nature of the disability and its effect on the child's educational progress
- The name and location of the school district involved, including the names of relevant individuals including superintendent, principal, special education supervisor, and others thought to be familiar with the issues raised by the complainant (teachers, etc.)
- The exact nature of the discriminatory acts, the dates of occurrences, and the effect on the student and parents;
- Any additional background information that may, to the parents, seem necessary

Section 504 regulations guarantee the right of access to relevant records. Further, because parents have the right to an impartial hearing when there is a disagreement regarding the identification, evaluation or educational placement of a student with disabilities, the parents can request the hearing procedure provided for in the regulations. In addition to the Section 504 access rights, parents also have those same rights guaranteed under the Family Educational Rights and Privacy Act.

8. Extracurricular Activities

Section 504 regulations require that school districts provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in those services and activities. The services and activities may include counseling services, physical, recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the school district and assistance in making available outside employment.

School districts may not discriminate on the basis of disability with respect to physical education courses and athletic programs and activities. Schools may offer physical education and athletic activities that are separate only if it is consistent with the least restrictive environment principle and only if no qualified student with a disability is denied the opportunity to compete for teams or participate in courses that are not separate. If a reasonable accommodation is required to enable the student to participate, the district is required to modify nonessential eligibility requirements. Thus, when reasonable accommodation will remove an obstacle to participation, the district must take that action. However, where the student cannot qualify for an essential requirement of the activity, e.g., the age requirement, it has been held that the student not meeting the eligibility requirement would not be "otherwise qualified."

B. NO CHILD LEFT BEHIND ACT (NCLB) 20 U.S.C. §§ 6301 ET SEQ.; 34 C.F.R. PART 200

1. Coverage

NCLB covers all states, school districts, and schools that accept Federal grants under Title I of the Elementary and Secondary Act. The Title I grants provide funding for remedial educational programs for poor and disadvantaged children in public schools and in some private programs.

2. Purpose

The legislation was enacted to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state

Indeed, it is the purpose of the Act "to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education. Therefore, the legislation has a pervasive impact on IDEA and Section 504 students.

Students with disabilities, with or without accommodations, are required to take part in state and local assessments. Many such students do not qualify for "special education." Of those students, many do not have disabilities that would prevent them from competing equally with the general student population. If a student with disabilities requires accommodations, that student is presumed to take the tests on an equal footing, e.g., a blind student taking tests in Braille. Thus, under NCLB, it would be inconsistent with that Act to exclude students with disabilities from its accountability provisions.

Currently, there are legal exceptions allowing school districts to remove the test scores of students with disabilities from accountability system. For example, if a district has a small number of students with disabilities, the scores of those students may be excluded if the number is too small to yield statistically verifiable information. The "adequate yearly progress" (AYP) required under NCLB provides for the exclusion of a number of students with disabilities (based on a formula). However, one cannot, under the law or in good conscience, generalize these students as a stereotypical group, because many can and should compete on equal ground. In any case, schools must test 95 percent of children with disabilities and therefore up to five percent has already been excluded from the accountability system. Further, districts may be allowed to average data over three years. Lastly, some students will be tested using alternative achievement standards.

In order to meet the individualized and unique needs of each student with a disability, there are four options:

- Take the regular test in the same manner as all students
- Take the regular assessment with approved accommodations or modifications
- Take an alternate assessment based on the same achievement standards as the regular test
- Take an alternative assessment based on different achievement standards, e.g., life skills rather than academic

Therefore, NCLB is highly relevant to IDEA, not only in specific ways (for example, definitions of "highly qualified," "core academic subjects," etc.), but in overall application. There is no legitimate or statutory reason to exclude children with disabilities from the national policy announced in NCLB, and to further segregate them as a class.

C. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)
20 U.S.C. § 1232g; 34 C.F.R. PART 99; IDEA 20 U.S.C. § 1412(a)(8); 34 C.F.R. §§ 300.610-627

- Requiring the parent's consent before using the records for any purposes other than those related to providing special education and related services
- Not releasing information from education records to participating agencies without parental consent unless authorized to do so under Federal law;
- Adhering to state policies and procedures which apply in the event that the parent declines to give this consent and the school district feels the records should be given to the person requesting them
- Protecting the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages
- Assign an individual who is responsible for ensuring the confidentiality of records
- Guaranteeing that all persons who collect or use such information receive training in the state's policies and procedures regarding confidentiality
- Keeping for public inspection a list of names and positions of those employees permitted access to the records
- Destroying the information at the parent's request consistent with state law

A permanent record of a student's name, address and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

The district is obligated to give notice that is adequate to fully inform parents with respect to its policies and procedures that it has undertaken to ensure protection of the confidentiality of any personally identifiable information collected, used, or maintained under IDEA and FERPA.

D. FREEDOM OF INFORMATION ACT (FOIA) **Ark. Stat. Ann. § 25-19-105**

It is the policy of the State of Arkansas that public records shall be open for inspection and copying by any citizen of Arkansas during regular business hours of the custodian of those records. The request must be sufficiently specific to identify the records sought to be disclosed. A sample copy of an FOIA request is attached at Appendix V. There are many exemptions to the overall policy. An FOIA request may be denied with respect to such records as tax records, medical records, and those education records of others described in FERPA.

Use of the FOIA should not be abused. Parents are entitled to the records of their own child with a disability without resort to the FOIA, but those records will be denied to others under the statutes concerning children with disabilities in an educational setting under IDEA, and relevant statutes, as well as the FOIA. The

All communications between parent and school should be in writing. When the parent engages in oral conversations with school personnel, the parent should request that the school representative put the major points in writing. If that person refuses, the parent should write a letter to the school which contains the information discussed to the best of the parent's recollection. Above all, the parent should establish a paper trail, i.e., keeping written records of events or discussions which affect the parent's efforts to obtain services. Parents should maintain written records of all contacts with the school and with medical personnel, evaluators and others relevant to efforts to obtain FAPE. All records should be maintained in a file in the parent's home. Further, parents should add a written record of reports and notes relevant to the child's needs. Maintenance of written records by parents will most likely lead toward the school district's compliance with law.

While due process hearings are to be avoided if possible, the parents' record keeping will form the basis for successful due process hearings and, if required, court evidence.

C. Parent Groups

If at all possible, parents should always work in groups, i.e., with other parents of children in special education who will have similar experiences with their children and with the school. In order to achieve desired services, requests coming from several parents, as opposed to an individual parent, will always be more persuasive and more likely elicit a response from the school. This is particularly true when parents raise not only IDEA issues, but requests based on Section 504 or the ADA.

D. Participation in IEP Meetings

The law requires meaningful parental participation in the child's IEP process. During IEP meetings, the following may be helpful:

- If you are not introduced at the meeting to any persons, introduce yourself to all team members
- Make a note of the names and positions of everyone at the meeting. You may want to record these on the list of important telephone numbers since they are likely to be people with whom you will have contact in the future
- Ask questions to clarify the particular role of other team members if this is not explained initially
- If you bring a friend, introduce that person and explain his/her role
- If you have a time limit for the meeting, let other team members know. Ask if a time limit has been set by others on the team
- Ask the chairperson to state the purpose of the meeting and to review the agenda, if this is not done at the beginning
- Ask for clarification if you have any questions about your legal rights;
- Ask that all tests administered be explained specifically to

well before parents take any step toward formal disagreement. Also, the parents will have in their possession all relevant documents generated by the district in collaboration with the parents.

It is true that, among the purposes for which the legislation was enacted is to ensure that the rights of children with disabilities and parents are protected at all times during the special education process. Yet, these "rights" do not exist in a vacuum. With them come substantial responsibilities, which parents of students with disabilities must respect and accept.

One great consistency in IDEA is its requirement of parental participation throughout the special education process. This participation is intended to lead to *collaboration* between parents and school district in a joint effort to provide the child with an appropriate education. If parents, following the evaluation and/or the IEP process, are convinced the district is wrong, they may appeal to the State by complaint or hearing request. If the parents are properly prepared, they may well succeed in their efforts. The Arkansas Department of Education, Special Education, is not in the business of unjustly denying appropriate services to children with disabilities.

From the beginning of the process, parental consent must be obtained. That consent must be *informed* consent. Because they have a place at the decision table, the parents must take pains to fully understand the district's proposals as to appropriate services and placement. The parents must attempt to understand the rights given by the statute whether that information comes from the school, an advocacy group, the State, or an attorney. Parents owe the obligation of patience and understanding to the child. No parent is required to consent to an evaluation or the provision of a FAPE. If parents do enter the process, they are not required to agree to the total package of proposals made by the district. The decision to accept or not to accept is a significant responsibility. It will not be fulfilled by simply expressing anger at the district.

For example, parents may wish immediately to choose a private school over the public school. Before doing so, they must recognize that the district is not required to pay for the cost of that education and related services if the district can show that it has offered FAPE to the child. Even if parents can demonstrate that they are entitled to some reimbursement, that amount will be reduced if, at the most recent IEP meeting prior to the removal of the child from public school, the parents did not inform the IEP team that they were rejecting the proposed placement.

Reimbursement may also be denied or reduced if, at least ten days (including holidays falling on a business day) prior to the removal, the parents did not give written notice to the district. The amount may also be affected if prior to the removal, the district informs the parents of its intent to evaluate the child, but the parents do not make the child available.

In the event parents decide to request a due process hearing for any allowable

APPENDICES

**PROTECTION AND ADVOCACY FOR ASSISTIVE TECHNOLOGY
(PAAT) 29 U.S.C. §§ 3001 *et seq.***

Disability Rights Center of Arkansas provides individual and systemic protection and advocacy services pursuant to the Technology-Related Assistance for Individuals with Disabilities Act

**PROTECTION AND ADVOCACY FOR
BENEFICIARIES OF SOCIAL SECURITY
(PABSS) 42 U.S.C. § 1320b-21**

DRA assists individuals with disabilities who are beneficiaries of Social Security to secure, regain or maintain employment while retaining their benefits.

**PROTECTION AND ADVOCACY FOR VOTING ACCESS
FOR AMERICANS WITH DISABILITIES
(PAVA) 42 U.S.C. § 15461**

This program is designed to assist individuals with disabilities by providing information and protection and advocacy with respect to accessible polling places, independent and accessible voting, and denial to register and vote.

**PROTECTION AND ADVOCACY FOR INDIVIDUALS
WITH TRAUMATIC BRAIN INJURY
(PATBI) 42 U.S.C. §§ 3000d-53**

For individuals who have sustained a traumatic brain injury, DRA will provide legal, administrative, and other remedies to protect and advocate their rights and give helpful information for referral services.