



## INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

The information included on this page is for educational and informational purposes only. Please consult an attorney regarding specific legal questions.

# Special Education Laws in Texas

By DORENE PHILPOT

Children with disabilities who qualify for special education at public schools are protected by federal and state laws, primarily the rules of the Commissioner of Education and State Board of Education for Special Education Services.<sup>1</sup> They are also protected by Section 504 of the Rehabilitation Act, the Americans with Disabilities Act Amendments Act of 2008, the Family Educational Rights Privacy Act, and the No Child Left Behind Act, among others. Learn more about Texas' special education rules at [www.tea.state.tx.us/special.ed/rules](http://www.tea.state.tx.us/special.ed/rules).

Schools are charged with providing an Individualized Education Plan (IEP) for a child with special needs. This means that the child's unique needs are to be evaluated and then taken into account when the school and parents devise the child's IEP, a multi-page document detailing plans for the child's education. The IEP is supposed to be "appropriate" and confer "meaningful" educational benefit to the child in the "least-restrictive environment." What is appropriate, constitutes meaningful benefit, or is the "least-restrictive environment" is subject to debate. Given that the statutes and rules don't define those terms, they are defined on a case-by-case basis. What often happens is that the parents and school disagree about what is appropriate because parents want more services than the school — often working with limited resources, lack of sufficient staff, and lack of staff training — can provide.

According to the Texas Young Lawyers Association's pamphlet, *Special Education Laws and the School Environment: A Guide to Understanding Your Rights as a Parent*:

When analyzing whether a child has received an "appropriate" education, the courts look at several factors including whether the school followed the requirements of the child's IEP

and whether the school has provided *some* educational benefit. Under the law, a school is not required to provide the best education and [schools] often use the analogy that a child is entitled to a "Chevrolet" education, not a "Cadillac" education.<sup>2</sup>

There are many reasons that schools and parents reach an impasse. For example, parents of children with autism want schools to utilize research-based, scientifically proven therapy to enable their children to eventually be placed in regular classes. However, this is expensive because it requires one-on-one assistance for the child and a behavior consultant to design and oversee the program. Schools often don't have the funds or training to provide such services.

### How Disputes Are Resolved

When the school and parents disagree, the parents may choose to solve a dispute through admission, review, and dismissal (ARD) committee meetings. However, if the parents are not satisfied after the ARD process, they still have options: mediation, a state complaint investigation, and due process.

With mediation, once the school and parent agree to begin the process, the Texas Education Agency (TEA) assigns a no-cost mediator. In Texas, the special education hearing officers serve as mediators, which is helpful because they understand the terminology, typical issues, and resolutions. If the parents are unable to resolve the dispute through mediation, they may file a state complaint.

With a complaint investigation, a TEA employee obtains information from the parents and school about what happened, gathers documents, and issues findings and corrective action. Because the complaint process isn't complicated,

many parents file their own complaints without attorneys.

A special education due process hearing is set when parents file a complaint with the TEA. The hearing is requested through either a downloadable form on the TEA's website or in letter format, and a hearing officer is assigned from a rotating list. This individual conducts an administrative hearing and issues a decision on whether the child's substantive or procedural due process rights in state and federal law have been violated and, if so, orders remedies. The TEA bears the cost of the hearing, including the transcript and hearing officer fees. If the parents prevail, the school can be ordered by a court to pay the attorney costs for the parents. The hearing is usually over within three or four months, although the parties can agree to take longer to do an updated private or school-administered evaluation or conduct settlement negotiations. After the hearing officer renders a decision, either party may appeal to state or federal court.

To learn more about special education in Texas, visit [www.tea.state.tx.us/special.ed](http://www.tea.state.tx.us/special.ed) or [www.wrightslaw.com](http://www.wrightslaw.com). \*

### Notes

1. 19 Texas Administrative Code, §89.1001-89.1191 and the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), 20 U.S. Code §1400 et seq.
2. *Special Education Laws and the School Environment: A Guide to Understanding Your Rights as a Parent*, Texas Young Lawyers Association, 2008, p.6.



### DORENE PHILPOT,

a private practitioner licensed in Texas and Indiana, represents special-needs children. She is admitted to practice in federal courts in Texas and Indiana and in the 5th Circuit Court of Appeals. Philpot is a frequent speaker to advocacy organizations on special education.