

Public vs. Private School Special Education Rights

Many federal laws apply to public schools. Some of those laws apply to students with disabilities. They help students access opportunities and success in their education. The laws also stop segregation and discrimination due to disability.

The recent voucher system does not take away student's rights in public schools. The voucher system mainly affects students in non-public schools. Parents may be considering which system is a better fit for their child. Understanding the difference between student's and parent's rights in public and non-public schools is important when making this decision.

This FAQ highlights considerations that parents face generally. Each student and situation is unique. Parents may need to consult special education lawyers and advocates to help decide. This FAQ is not intended to replace that kind of consultation, nor is it intended to be legal advice.

Students with Disabilities in Public Schools

Do students with disabilities have a right to public education?

Yes.

What laws protect students with disabilities?

- The Individuals with Disabilities Education Act (IDEA) requires the following:
 - students receive a free and appropriate public education (FAPE)
 - receive FAPE in the least restrictive environment (LRE)

Every child has the right to enroll in a public school. Public schools must educate students with and without disabilities. Reasonable supports and services are provided to students when needed. Students with and without disabilities must interact and learn together when possible.

What accommodations must a public school provide to a student with a disability?

- The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act require schools to provide reasonable accommodations so students with disabilities can be successful. Reasonable accommodations include:
 - classrooms, bathrooms, and other facilities are accessible to students with physical disabilities
 - extended exam times or alternative exam formats
 - materials in alternative formats such as Braille or audio recordings

How may a public school discipline a student with disabilities?

- Students with disabilities are protected against discrimination. This means students cannot be disciplined because of their disability. The IDEA

requires schools to hold a Manifestation Determination Review (MDR) in some situations.

- **When must there be a MDR?**
 - When a student's placement is changed for more than 10 days or
 - Because of in or out of school suspensions or expulsions that amount to more than 10 days
- **The MDR must answer two questions:**
 - Whether the student's behavior was a result of their disability
 - Whether the student's behavior was a result of their IEP not being followed

Until a MDR can take place, the public school is required to keep the student in their current placement. This means a school cannot suspend or expel a student while the MDR is being scheduled and before the MDR team has answered the two questions above.

If the MDR finds the behavior was due to the student's disability or because the IEP was not followed, the discipline cannot continue for more than 10 days. The school must then consider supports and services to assist the child. These supports and services should help the child with their behavior.

Parents may disagree with a public school's decision about their student. What rights do they have in that situation?

- The IDEA gives parents the right to be involved in shaping their child's education, but they must still work together with the school. Public schools may suggest changes to a student's:
 - Individualized Education Program (IEP)
 - Behavior Intervention Plan (BIP)
 - Current educational placement

If parents disagree they can:

- Request mediation through the Area Education Agency (AEA) or State Department of Education
- File a complaint with State Department of Education
- File a due process complaint
 - During a due process complaint, students must "stay put" in their current placement. This means that public schools cannot make major changes to the supports and services the student has currently unless the parent agrees to it. Once the complaint is resolved changes may be made.

Students with Disabilities in Non-Public Schools

What rights do students with disabilities have in non-public schools?

The same rights do not apply in public as non-public schools. For example, the IDEA does not apply to non-public schools. State law extends special education supports and services to non-public schools. But, if the non-public school violates federal or state special education laws the only remedy may be a federal lawsuit. Federal lawsuits are expensive and time consuming. This is because the administrative procedures in the IDEA do not apply to non-public schools.

Non-public schools are not required to provide FAPE to students with disabilities. FAPE is provided by the Area Education Agency (AEA) instead. The AEA is a public agency that assists several school districts in the area. The AEA must make FAPE available to students with disabilities in non-public schools. But, the non-public school is not required to help the AEA provide FAPE.

Unlike with public schools, students do not have an automatic right to enroll in non-public schools. Non-public schools are not required to accept students with disabilities. Some non-public schools have explicit policies that exclude students with disabilities. Others may have entrance exams that deny entrance to students with disabilities.

What accommodations must a non-public school provide to students with disabilities?

If non-public schools accept federal money, they must follow the ADA and Section 504. So, non-public schools receiving federal funds must provide reasonable accommodations.

If they don't accept federal funds, they do not have to follow the ADA or Section 504. This means they are not required to provide reasonable accommodations. Further, it may be difficult to find out whether a non-public school accepts federal money. Some examples of federal funding a non-public school may accept are:

- free and reduced lunch programs
- grants to buy technology and school materials
- money for professional staff development

How may a non-public school discipline a student with disabilities?

As mentioned above, the IDEA may require a Manifestation Determination Review when a public school disciplines a student with disabilities. But, the IDEA does not apply to non-public schools. Section 504 may apply to the non-public school if the school accepts federal money.

Under Section 504, the school must also hold a MDR if they discipline a student with disabilities. However, unlike the IDEA, Section 504 does not include a "stay-put" requirement for the school to keep the student in the same placement while the MDR is

pending. This means that a non-public school can suspend or expel a student before the MDR is held.

What rights do parents have when they disagree with a public school's decision about their student with disabilities?

Parents may disagree with decisions made about supports and services for their child. If this happens they don't have the same resolution choices in non-public schools as they would in public schools. This is because the IDEA does not apply to non-public schools and so they are not responsible for providing FAPE.

The AEA handles providing FAPE to students with disabilities in non-public schools. They are supposed to make reasonable attempts to provide services and supports. But, if the non-public school acts as a barrier parents have few choices for resolving this issue. In this case the non-public school likely hasn't violated law. Parents would likely be unsuccessful in challenging the non-public school's decision without a federal lawsuit under the ADA. As mentioned before, this can be time consuming and expensive.

What rights do students with disabilities have in non-public religious schools?

Fewer rights apply to religious non-public schools. Religious schools are not required to follow the IDEA. The ADA exempts religious organizations, even if they receive federal funding.

Section 504 does apply to religious schools that accept federal funding. However, Section 504 only requires that the school provide accommodations for a student to access general education. It does not require a school to provide special education or all the supports and services that are required under the IDEA.