

# Private School Voucher

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 new voucher system does not take away students' rights in public schools. The voucher system mainly effects 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.

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.

The Individuals with Disabilities Education Act (IDEA) requires that:

Students receive a free and appropriate public education (FAPE)

Receive FAPE in the least restrictive environment (LRE)

**Please review DRI's Special Education FAQ to learn more about what the IDEA, FAQ coming soon.**

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

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 may 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

## **What protections exist for students with disabilities in discipline matters in public school settings?**

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. An MDR:

- Occurs when student placement is changed for more than 10 days
- Occurs because of in or out of school suspensions or expulsions

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

Please review DRI's Special Education FAQ to learn more about the MDR process, FAQ coming soon.

## **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. Parents are a required member of the IEP Team for their child. Various changes to a child's IEP may be suggested by public schools such as:

- Changes in special education services and support in the Individualized Education Program (IEP)
- Behavior Intervention Plan (BIP)
- Current educational placement

Public schools cannot make major changes to the supports and services the student has in an IEP unless the parent agrees to the change. If parents disagree, they can:

- Request mediation through AEA or State
- File a complaint with State Dept. of Education
- File a due process complaint

If a parent files a due process complaint, the IDEA requires that the school keep the student in their current placement during the due process complaint process including an appeal of that decision.

## **Students with Disabilities in Non-Public Schools:**

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

The IDEA does not apply to non-public schools, and so students with disabilities do not have the same protections in some ways. Iowa state law extends special education supports and services to students in non-public schools, but these rights are protected differently than for students at public schools. 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. Non-public schools may have enrollment criteria that have the effect of excluding and denying admission to students with disabilities.

The administrative procedures contained in the IDEA do not apply to non-public schools. This can make enforcing a non-public school student's right to receive special education supports and services more difficult.

Non-public schools are not required to provide a free and appropriate public education (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.

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

Most non-public schools must follow the Americans with Disabilities Act. The Americans with Disabilities Act does not apply to non-public religious schools. If a non-public school accepts federal money, they must additionally follow Section 504 of the Rehabilitation Act. Non-public schools receiving federal funds must provide reasonable accommodations to students with disabilities. Reasonable accommodations may include

- Extended time or alternative settings to take tests

- Materials provided in alternative formats, such as Braille or large print
- Accessible classrooms and facilities on school grounds
- Modifications to school policies and procedures

Non-public schools may receive federal funding for a variety of needs; some common reasons include:

- 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?**

The IDEA may require a Manifestation Determination Review (MDR) when a public school disciplines a student with disabilities. The IDEA does not apply to non-public schools, but Section 504 does if the school accepts federal money.

In many ways discipline procedures under the IDEA and Section 504 are the same. However, unlike the IDEA, Section 504 does not require the school to provide supports and services while a student is suspended if the school finds the student's conduct is not due to their disability or the school's failure to follow the IEP.

### **What rights do parents have when they disagree with a non-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 in a non-public school, parents do not have the same resolution options they would in the public school. This is because the IDEA requirements do not apply to non-public schools and the responsibility to provide FAPE for students in non-public schools remains with the AEA.

The AEA is responsible for providing FAPE to students with disabilities in non-public schools. They are supposed to make reasonable attempts to provide services and supports. If a parent experiences difficulties in their child receive FAPE in the non-public school, there are few choices available for them to use to resolve their concerns. Parents may bring an IDEA complaint regarding the concern against the AEA. However, even a successful decision on the IDEA complaint is not enforceable against the non-public school. Students with disabilities may have rights pursuant to the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act to challenge non-public school determinations. However, neither of these laws have an administrative complaint process for parents to use and therefore may require the parent to bring an ADA and/or 504 suit against the school district in court.

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

Fewer rights apply to religious non-public schools as they 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.