

Regular Teachers' Rights In Special Education

by
Reed Martin, J.D.

Teachers are an integral part of the process of delivering education. The rights in special education laws empower teachers as well as parents and students.

1. **Right of teachers to participate in self-evaluation of school district.** This self-evaluation would examine all the policies, practices and procedures relating to students with disabilities and allow teachers to raise and answer their questions as interested parties. The self-evaluation was required to be completed under Section 504 (and renewed when needed) and completed under the Americans with Disabilities Act no later than January 26, 1993.
2. **Right to seek assistance for a student in a classroom that is not receiving benefit.** It is illegal under federal special education law to leave a child to fend for himself in a classroom designed for others. The student has a right to be referred for necessary assistance and the teacher has a concomitant right to make the referral where assistance is needed. This is not a right to rid the classroom of that child but rather a right to bring additional information or assistance into the classroom.
3. **Right to recognize the teacher as a child advocate.** The ADA recognizes teachers as advocates, and outlaws retaliation, intimidation or reprisals for teachers who advocate for children.
4. **The right to have the child fully evaluated.** The child has a right to be evaluated in every area that might adversely affect educational performance and the teacher has a right to know everything educationally relevant to that child.
5. **The right to receive any training needed under the Comprehensive System for Personnel Development.** If the key to serving the student appropriately is teacher training, then the teacher has a right to receive that training.
6. **The right to participate in the IEP which develops the plan for a student in their class.** The statute includes "the child's teacher" as a participant in the IEP meeting. All questions a classroom teacher might have must be asked and answered before the child comes into the classroom. If the school's practice is simply to have "a representative of instruction" at the IEP, but they do not represent the interests of the classroom teacher, the classroom teacher should ask to have the IEP meeting reconvened to ask and answer the questions that have not been addressed. If the classroom teacher advocates in this way, they are protected from reprisal by school administrators.

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7. **The right to receive the related services that should honestly be on the IEP.** If needed supplemental aids and services are not discussed at the IEP then it violates the teacher's, student's and parents' rights. If services are decided on at the IEP, but they are not provided in the classroom, it violates the teacher's, student's and parents' rights.
8. Right to be recognized as an advocate for all the children in the classroom. A classroom teacher has a duty to all the children in the classroom. This duty is not antagonistic to a child with special needs. The cases on placing children in the least restrictive environment recognize that the interests of other children, and the ability of the teacher to teach the classroom, are balanced with the right of a child with special needs to be in that regular classroom.
9. The teacher has a right to participate in assessing the effectiveness of the program. When the IEP committee leaves the IEP room, they must have an IEP that is reasonably calculated to confer benefit. Once the IEP is begun the teacher must have a role in assessing whether the IEP is working. During the year, and at the next IEP, the teacher's view is vitally important to determining whether that was an appropriate placement.
10. The teacher has the right to be treated as a professional. Teachers are not just subordinate employees expected to carry out orders without questions. They are professionals with rights to ask for referral, for evaluation, for reevaluation, for an IEP meeting, and for further refinements of the IEP. It is clear from the legislative history that Congress viewed the teacher as a participant in the process that is just as important as the role of the parent or the school administrator.

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