

Free Appropriate Public Education (FAPE): Is My Child Receiving One?

BY MICHAEL DORFMAN

EXCERPTS PRINTED WITH PERMISSION FROM THE FRIENDSHIP CIRCLE BLOG: FOR THE FULL ARTICLE GO TO: [HTTP://WWW.FRIENDSHIPCIRCLE.ORG/BLOG/2013/07/16/FREE-APPROPRIATE-PUBLIC-EDUCATION-FAPE-IS-MY-CHILD-RECEIVING-ONE/](http://www.friendshipcircle.org/blog/2013/07/16/free-appropriate-public-education-fape-is-my-child-receiving-one/)

Any school district that accepts federal funds for assistance in the education of children with disabilities must comply with the Individuals with Disabilities Education Act's ("IDEA") mandates as a condition of receiving the funds. The goals of IDEA include "ensuring that all children with disabilities have available to them a **free appropriate public education**" ("FAPE") and "ensuring that the rights of children with disabilities and parents of such children are protected."

What is FAPE?

The IDEA defines FAPE to be an educational instruction "specially designed . . . to meet the unique needs of a child with a disability," coupled with any additional "related services" that are "required to assist a child with a disability to benefit from [that instruction]," pursuant to an IEP.

The education must, among other things, be provided "***under public supervision and direction, meet the standards of the State educational agency,***" and "***include an appropriate preschool, elementary school, or secondary school education in the State involved.***" The instruction must, in addition, be provided at "***no cost to parents.***"

Congress & The Department of Education

Aside from the definition for FAPE from IDEA, which is quoted above, Congress has not defined what constitutes an "appropriate" education more specifically despite having the opportunity to do so repeatedly.

Is Your Child Receiving FAPE?

Is your child's IEP: "specially designed . . . to meet the unique needs of a child with a disability," coupled with any additional "related services" that are "required to assist a child with a disability to benefit from [that instruction]"? Is your child receiving all the related services they are entitled to and are they being educated in a manner in which they can learn, including adaptive technology? If the answer is no, your child is probably not receiving a FAPE under the law.

What Steps Can you Take?

When a party objects to the adequacy of the education provided, the construction of the IEP, or some related matter, IDEA provides procedural recourse: It requires that a State provide "[a]n opportunity for any party to present a complaint . . . with respect to any matter relating to the identification, evaluation, or

educational placement of the child, or the provision of a free appropriate public education to such child.”

1. Present your complaint

By presenting a complaint a party is able to pursue a process of review that, as relevant, begins with a preliminary meeting “where the parents of the child discuss their complaint” and the local educational agency “is provided the opportunity to [reach a resolution].”

2. Impartial Due Process Hearing

If the agency “has not resolved the complaint to the satisfaction of the parents within 30 days,” the parents may request an “impartial due process hearing,” which must be conducted either by the local educational agency or by the state educational agency, and where a hearing officer will resolve issues raised in the complaint.

3. Filing Suit in Federal Court

Once the state educational agency has reached its decision, an aggrieved party may commence suit in federal court: “Any party aggrieved by the findings and decision made [by the hearing officer] shall have the right to bring a civil action with respect to the complaint.”

Payment for private school and attorney’s fees

IDEA provides for at least two means of cost recovery. First, in certain circumstances it allows a court or hearing officer to require a state agency “to reimburse the parents [of a child with a disability] for the cost of [private-school] enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child.” Second, it sets forth rules governing when and to what extent a court may award attorney’s fees. A caveat is that attorney’s fees can be awarded to a school district as well if a parent does not prevail.

Consult an Attorney

Attorneys are well versed in the latest case law and interpretations of FAPE and IDEA by the federal courts. If you believe your child is not receiving FAPE and is entitled to more services or technological aids for example, an attorney can examine the facts and determine whether you have a strong case to make. The school districts always have a bevy of attorneys to assist with these issues and you should too.