



ADVOCACY CENTER

SERVING PEOPLE WITH DISABILITIES AND SENIOR CITIZENS

**EDUCATIONAL RIGHTS OF
CHILDREN
WITH DISABILITIES IN
LOUISIANA:
A Guide for Parents**

**Advocacy Center
1010 Common Street, Suite 2600
New Orleans, La. 70112
(504) 522-2337 Toll Free (800) 960-7705
TTY (866) 935-7348 Fax (504) 522-5507**

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1. LAWS AND RIGHTS

A Guide for Parents



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DEDICATION

After Glow

I'd like the memory of me
to be a happy one.
I'd like to leave an after glow
of smiles when life is done.
I'd like to leave an echo
whispering softly down the ways,
Of happy times and laughing times
and bright and sunny days.
I'd like the tears of those who grieve,
to dry before the sun
of happy memories
that I leave when life is done.

Anonymous

Lee Ann Vaught was a positive force for good, who worked tirelessly on behalf of the children she represented. She was a born advocate and teacher.

In fact, Lee began her career as a teacher. After graduating from the University of Mississippi with a major in journalism and English, Lee taught language arts at the middle school level and later taught English and Journalism at the high school level. After teaching at Dominican High School in New Orleans for eight years, Lee felt that she could continue to affect the lives of students in a positive but different way by becoming a lawyer/advocate.

After graduating from Loyola School of Law in 1996, Lee went to work for the New Orleans Legal Assistance Corporation as a Staff Attorney. In the Fall of 1998, Lee joined the staff of the Advocacy Center where she was able to get fully immersed in Special Education law. She had come back to her first love—helping children to reach their full potential through advocacy that was based on solid legal principles and a warm heart. Not very long after Lee joined the Advocacy Center's staff, she was promoted from Staff Attorney to Managing Attorney and took over leadership of AC's Special Education Issue Group. Lee took her work seriously and worked long hours on behalf of her young clients.

Yet, she never let the seriousness of the work she did cloud her days. Everyone at the Advocacy Center, where she worked for over ten years, envied those who were part of Lee's Special Education Issue Group because, whenever they met, the rest of us could hear loud and raucous laughter echoing through the office.

In the sentiment of the poem quoted above, Lee Ann Vaught would want those of us left behind to remember her with happy memories. No problem, Lee. You brought happiness and laughter to all the lives you touched during your short stay on this earth. We dedicate this booklet to you.

1. 1 FEDERAL LAW

Introduction

The civil rights movement, which began in the 1960s, has altered the way minority groups are treated in our society. The movement fostered anti-discrimination, equality, and desegregation. Racial and ethnic minorities were the first groups to obtain legal protection against discrimination, and women and other groups later sought legal protection by joining the civil rights movement. In the 1970s and 1980's, people with disabilities started to demand their rightful place in the mainstream of society. As a result, children with disabilities have specific rights under federal law, and this booklet outlines the federal laws that directly affect such children.

1.1a THE EDUCATION FOR HANDICAPPED CHILDREN ACT; PUBLIC LAW 94-142

This Act, which is now called the **Individuals with Disabilities Education Act**, was first signed into law in 1975. The law mandated that all children with disabilities, ages 5-21, be provided a **free appropriate public education**, including special education and related services to meet their unique needs. The law gave the states the option to include children as young as three years of age. Louisiana took advantage of this option. The law also required states to identify and evaluate children who were suspected of needing special education and develop a plan for implementing the federal directives. The highlights of P.L. 94-142 as they exist today, are:

- All children and youth (ages 0-21) with disabilities, regardless of the severity of the disability, have the right to receive a free appropriate public education (FAPE) - at public expense.
- Education of children and youth with disabilities must be based on a complete individual evaluation and assessment of the specific, unique needs of each child.
- An Individualized Education Program (IEP), or an Individualized Family Services Plan (IFSP), must be drawn up for every child or

youth found eligible for special education or early intervention services, stating precisely what kinds of special education and related services, or the types of early intervention services each infant, toddler, preschooler, child, or youth will receive.

- To the maximum extent appropriate all children and youth with disabilities must be educated in the regular education environment.
- Children and youth receiving special education have the right to receive related services that may be necessary for a child to benefit from his or her instruction.
- Parents of a child with a disability have the right to participate in every decision related to the identification, evaluation, discipline and placement of their child.
- Parents must give consent for any evaluation, assessment, or placement.
- Parents must be notified of any change in placement that may occur.
- Parents must be included, along with teachers, in conferences and meetings held to prepare individualized programs (IEPs). The exception to this is when a parent has been properly notified but does not attend or refuses to attend a meeting. In such cases, *except where it is an initial IEP*, the plan may go into effect without the parent's involvement and/or signature. Where it is an initial IEP the parent must approve the plan before it can go into effect.
- Parents have the right to challenge and appeal any decision related to the identification, evaluation, discipline, and placement of their child, or any issue concerning the provision of FAPE. They have the right to make these challenges through clearly spelled-out due process procedures.
- Parents have the right to confidentiality of information. No one may see a child's records unless the parents give their written permission. (The exception to this being school personnel with legitimate educational interests.)

1.1b THE INFANTS AND TODDLERS ACT

In 1986, Public Law 94-142 was amended to include a new initiative. The amendment, which was popularly called "The Infants and Toddlers Act" or simply "Part H," gave states five years to design, develop and implement early intervention services for infants and toddlers with developmental delays and their families. The 1997 Amendments made a few significant changes, one of which moved "The Infants and Toddlers Act" from Part H to Part C. The amendments authorized changes in regard to where services should be provided, personnel who may assist in providing services, a family resources assessment requirement, a clarification on certain types of medical insurance, and finally, an emphasis on the use of mediation. These changes were maintained in the 2004 amendments.

1.1c IDEA AMENDMENTS AND REGULATIONS

1997 IDEA Amendments and Ensuing Regulations

On June 4 1997, Congress passed, and President Clinton signed into law, the reauthorized IDEA of 1997 (P.L. 105-17), which resulted in significant changes. The 1997 amendments increased emphasis on children participating in the general/regular education classroom, required children with disabilities to participate in statewide and district-wide assessment programs, and provided significant changes regarding discipline of students with disabilities. IDEA 1997 added parents and regular education teachers to the IEP team, and provided for the right of parents to participate in eligibility, placement, and discipline decisions. Finally, the law included a strong emphasis on using voluntary mediation as a means of resolving parent/school controversies. This emphasis on dispute resolution was furthered in the 2004 amendments by including another avenue for resolution, the "resolution IEP meeting."

In 1999, new federal regulations took effect to implement the 1997 IDEA amendments. There were two purposes served by the regulations. They were to conform the regulations to the new statutory requirements of the 1997 IDEA amendments, and to incorporate relevant longstanding interpretations of IDEA provisions that were not changed by the 1997 IDEA amendments.

One of the changes added Attention Deficit Disorder (ADD) and Attention Deficit Hyperactivity Disorder (ADHD) to the list of conditions that may

render a student eligible for special education under the category of other health impairment (OHI). Also, the definition for **parent** was expanded to include grandparent, stepparent, and others who meet the definitional criteria. The 1999 federal regulations addressed important aspects of IEPs, FAPE, discipline, and placement issues.

2004 IDEA Amendments and Ensuing Regulations

In 2004, Congress again reauthorized IDEA, and the federal regulations were amended and went into effect on October 13, 2006. This most recent reauthorization emphasizes and strengthens the participation of parents and families in their children's education, continues to emphasize the importance of providing students with access to the general curriculum and educating students in the regular classroom, encourages flexibility in the IEP process, tries to remove unnecessary paperwork burdens on educators, and encourages positive dispute resolution over more adversarial means.

As it had done in 1975, Congress declared its reasons for reauthorizing IDEA, stating that: "Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities". **See: 20 U.S.C. 1401(c)(1).**

The IDEA's primary directive is the same as when the Education for All Handicapped Children Act was passed in 1975; all children with disabilities must be provided a free appropriate public education.

1.1d FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

This law, also known as the Buckley Amendment, requires that all school records be kept confidential. There are specific policies for storing information, releasing it to third parties, destroying it, and protecting personally identifiable information.

Parents and their representatives have the right to see their child's educational records within 45 days of requesting to inspect them. There can be a charge for copies of the records unless this would prohibit the parents from having access to them.

Parents may also request that their child's records be changed and amended. Accordingly, parents not only have the right to see their child's records, but they also have the right to challenge their child's records.

1.1e THE REHABILITATION ACT OF 1973 (Section 504)

This law is of vital importance because it addresses discrimination against persons with disabilities. It was created to ensure affirmative action in employment and to eliminate discrimination based on handicapping conditions. The law has different sections that refer to different areas of discrimination, as follows:

- Section 501: Employment of Handicapped Individuals
- Section 502: Architectural and Transportation Board Compliance
- Section 503: Employment under Federal Contracts
- Section 504: Non-discrimination under Federal Grants

Section 504 provides individuals with disabilities basic civil rights protection against discrimination in **federal programs**. The law states that "no otherwise qualified handicapped individual in the United States shall, solely by reason of his [or her] handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." To be eligible for the protections under Section 504, an individual must meet the definition of a handicapped person. This definition is: "Any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." Major life activities include self-care, performing manual tasks, seeing, hearing, speaking, breathing, *learning*, and walking.

Section 504 covers persons with disabilities who are qualified to participate in programs or activities receiving **federal funding**. It applies to schools receiving money under IDEA. This includes pre-schools, elementary and secondary schools, and post-secondary institutions. For example, if a school district provides an after school program, it must allow students with disabilities to enroll in the program as well as students without disabilities. *Students with disabilities who do not meet eligibility criteria for services under IDEA may be entitled to accommodations in the classroom under Section 504. For information about Section 504 accommodations, see Advocacy Center's publication entitled "Section 504 and ADA protections for Students with Disabilities."*

1.1f THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

The ADA expands the concept of the Rehabilitation Act of 1973 beyond the federal arena. It includes not only federal programs, services, and places of employment that receive federal funds, but also privately operated public accommodations and services. The Americans with Disabilities Act provides for accommodations to individuals with disabilities in the areas of employment, public services, privately operated public accommodations and services, and telecommunications relay services. For additional information regarding the ADA, contact the:

**U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section - NYA
Washington D.C. 20530
Telephone 1-800-514-0301, 1-800-514-0383 (TDD),
FAX # (202) 307-1198**

For general information on the Americans With Disabilities Act or the Department of Justice, go to <http://www.usdoj.gov/crt/ada/adahom1.htm>.

1.1g HOW AND WHERE TO FIND FEDERAL LAWS

Public laws of the United States government are organized and published in a collection of all federal statutes called the United States Code. Although many people refer to laws by their Public Law number, the easiest way to find the law is to look it up in the U.S. Code. As laws are amended by subsequent Acts of Congress, the U.S. Code is revised. Thus, the U.S. Code contains the most up-to-date version of the law in question.

The U.S. Code is divided into numbered Titles, each of which is a grouping of laws dealing with a common subject matter. For instance, Title 20 contains the laws concerning education, and Title 42 contains those pertaining to public health and welfare. Within each Title, the various sections of the law are assigned a number. To find a particular law in the U.S. Code it is necessary to know both the Title and section numbers.

The U.S. Code is published in a multi-volume hardback series cited as U.S.C. (as in 20 U.S.C. § 1400). West Publishing Company also publishes a version

of the code containing case summaries and notes intended to illustrate the law. This is entitled U.S. Code Annotated and is cited as U.S.C.A. The law and citation numbers are identical in both versions.

When writing a law, Congress often delegates to an administrative agency of the U.S. government the task of issuing detailed regulations to implement the law. Federal agency regulations are collected in the Code of Federal Regulations (C.F.R.). The U.S. Government Printing Office issues a multi-volume paperback set of the C.F.R. which can be found in most public libraries. Like the U.S. Code, the Code of Federal Regulations is divided into Titles, and a complete citation includes both the Title number and section number of the regulation in question, e.g., 34 C.F.R. §300.1.

The following is a list of citations for the federal laws that were previously mentioned. The first number refers to the volume number. The second number(s) behind the book abbreviations refers to the section number(s).

- **Individuals with Disabilities Education Act (IDEA):** 20 U.S.C. § 1400- 1487; 34 C.F.R. § 300 & 301
- **Family and Educational Rights and Privacy Act, (FERPA):** 5 U.S.C. § 552a, 20 U.S.C. § 1232g; 34 C.F.R. § 99.1
- **The Rehabilitation Act of 1973:** 29 U.S.C. § 701- 797(b), 29 U.S.C. § 706(8); 34 C.F.R. § 104
- **The Americans with Disabilities Act of 1990 (ADA):** 42 U.S.C. § 12101-12213; 29 C.F.R. § 1630; 28 C.F.R. § 35-36

1.2 STATE LAW AND REGULATIONS

Introduction

Just as there is a body of federal law that protects the rights of persons with disabilities, there is also a body of state law that does the same. State laws sometimes parallel federal law: e.g., Louisiana's Education of Exceptional Children's Act parallels the federal IDEA.

Where a state law or bulletin conflicts with federal law, federal law usually prevails. If a conflict between state and federal law is discovered, then notice should be given to the Division of Special Populations in Baton Rouge.

1.2a THE EDUCATION OF EXCEPTIONAL CHILDREN'S ACT

Following the passage of P.L. 94-142 by Congress in 1975, Louisiana Act 754 was enacted, and was most recently amended in the 2008 legislative session to make modifications as necessary pursuant to the 2004 IDEA amendments. Special education services in Louisiana are administered by the State Department of Education in compliance with state and federal regulations.

1.2b BULLETINS THAT DEFINE STATE LAW

State laws are defined in paperback handbooks known as Bulletins. These Bulletins are available from the Louisiana Department of Education.

A sample letter requesting a copy of a particular Bulletin is included at the end of this section.

The following are some of the more pertinent Bulletins:

Bulletin 1706 - Regulations for Implementation of The Exceptional Children's Act:

This bulletin summarizes and defines all regulations that implement Act 754, Louisiana's Education of Exceptional Children Act.

Bulletin 1508 - Pupil Appraisal Handbook

Bulletin 1508 is a guide for the conduct of pupil appraisal services in each school system throughout the state. It includes procedures, standards, and criteria for identifying children eligible for special education and related services. It also includes policies and procedures for conducting evaluations and reevaluations of students with disabilities or who are suspected of having disabilities. In addition, a general description of pupil appraisal services encompasses personnel, responsibilities, rights of students and parents, and timelines to be observed.

Bulletin 1530 - Louisiana's IEP Handbook

Bulletin 1530 provides information regarding the Individualized Education Program (IEP), the basis for educational programming for students identified as exceptional in Louisiana. The handbook describes the IEP process and associated legal procedures. The intent of this handbook is not to replace

any regulations; rather, it outlines "best practices" as well as mandatory procedures. It serves as a training vehicle for interested parties in the effort to improve the quality of IEPs in Louisiana.

Bulletin 1573 - Complaint Management System

Bulletin 1573 defines the process of complaint management as implemented in Louisiana.

Bulletin 1872 - Extended School Year Handbook

This handbook contains a compilation of the rules governing the criteria for extended school year services. Although designed for use by school administrators, this handbook uses language that should be easy for a parent to follow.

To obtain a copy of any of these bulletins or to obtain a copy of Act 754 write to:

**Louisiana Department of Education
Office of Special Education Services
P.O. Box 94064
Baton Rouge LA 70804-9064**

Some of the bulletins are also available electronically over the internet. These bulletins are located at <http://www.doe.state.la.us>

**SAMPLE LETTER
REQUESTING A COPY OF A PARTICULAR BULLETIN
(Be sure to keep a copy for your records)**

(Date)

Louisiana Department of Education
Office of Special Education Services
P.O. Box 94064
Baton Rouge LA 70804-9064

Re: Copy of Bulletins 1706, 1508

Dear Sir or Madam:

I am the parent of a special education student. I want to request a copy of Bulletins 1706 and 1508.

Please mail a copy of each publication to me at the following address:

(Parent's address)

Thank you for your assistance.

Sincerely,

(Parent's name)

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