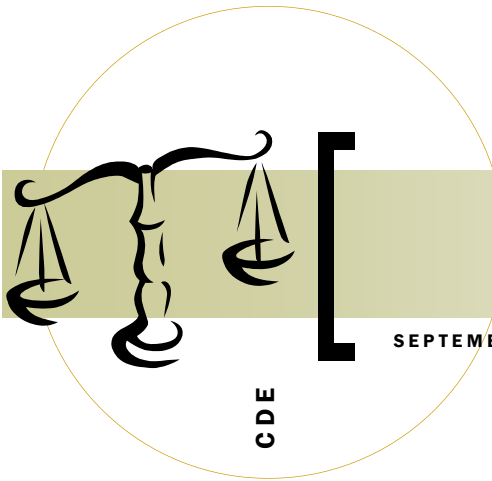


SPECIAL REVIEW

A NEWSLETTER ABOUT SPECIAL EDUCATION LAW ISSUES

SEPTEMBER 2005

Exceptional Student Services Unit
Colorado Department of Education



HOME-SCHOOLED CHILDREN NOT ENTITLED TO SPECIAL EDUCATION AND RELATED SERVICES

In Colorado, is a home-schooled student who has been identified with a disability entitled to special education and related services? According to the U.S. Department of Education's Office of Special Education Programs (OSEP), the answer depends on whether, under state law, home schools are equivalent to private schools.



In response to an inquiry about whether home schooled children with disabilities are entitled to special education services, OSEP first stated that, under the then current IDEA regulations, public agencies were required to make special education services available to students with disabilities who were enrolled by parent choice in private schools or facilities.¹ OSEP further stated:

Part B, however, does not define the term "private school or facility." Consequently, the determination of whether a particular home education arrangement constitutes the enrollment of a child with a disability in a private school or facility must be based on State law. If under the law of your State, home education constitutes enrollment in a private school or facility, then the requirements [applicable to private schools] would apply.²

In Colorado, it is important to note that child identification applies to *all* children, including home-schooled children.³ In the home-schooling context, Colorado law uses the term "nonpublic home-based educational program" and defines that term to mean "the sequential program of instruction for the education of a child which takes place in a home, which is provided by the child's parent or by an adult relative of the child designated by the parent, and which is not under the supervision and control of a school district. This educational program is not intended to be and does not qualify as a private and nonprofit school."⁴ (emphasis added)



The question of whether home-schooled children with disabilities are entitled to special education and related services has also been the subject of a state-level appeal of a due process hearing decision. The due process hearing decision held that home-schooled children were not private school children and, therefore, not entitled to special education and related services. In the appeal decision, the administrative law judge held as follows:

Colorado law thus specifically provides that home-based education cannot be considered a private and nonprofit school...a home-school child in Colorado is not enrolled in a private school or facility and a school district is not required by IDEA to provide special education and related services to such a student.⁵

Therefore, absent a change in the Colorado law or court interpretation to the contrary, home-schooled children in Colorado are not entitled to a free appropriate public education or to special education services that a district makes available to private school children with disabilities.

¹ The IDEA 1997 regulations clarified that private school children with disabilities have no *individual* entitlement to special education and related services.

² *Letter to Williams*, 18 IDELR 742 (1991)

³ Rule 4.01 of the Rules for the Administration of the Exceptional Children's Educational Act

⁴ C.R.S. §22-33-104.5(2)(a)

⁵ In the Matter of [Student] v. Las Animas School District, ED 96-13 (SEA CO 1997)

A LOOK AT THE CHANGES

IN THE EDUCATIONAL RIGHTS OF PARENTS



The Educational Rights of Parents (procedural safeguards) brochure has been amended based on IDEA 2004. You can find the updated version on the website at: www.cde.state.co.us/spedlaw/info.htm. There is also a new Spanish translation that is on the website as well.

There are a number of significant changes notably in the following sections: Prior Notice to Parents, specifically, when notice must be provided to parents; Educational Surrogate Parents and the timeline for the assignment of a surrogate; and Mediation regarding legally binding agreements. There are substantial changes to the Discipline section, specifically around the authority of school personnel, manifestation determination and appeal of a determination, Interim Alternative Educational Setting, and placement during appeals.

It is also important to note some of the changes to the Impartial Due Process Hearing section: 2 year statute of limitations provision; due process hearing notice requirements; amended notice; hearing officer requirements; and the resolution session.

These are only a highlight of amended sections. Please review the new Educational Rights of Parents brochure for complete information: www.cde.state.co.us/spedlaw/info.htm.

IDEA 2004

Visit the US Department of Education IDEA 2004 Resources website:

<http://www.ed.gov/policy/speced/guid/idea/idea2004.html>

