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## Legal Issues - Special Needs Children: Obtaining Special Education Services

by Linda J. Conrad Jansen, Esq.

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Many homeschoolers are reluctantly drawn to homeschooling because the schools failed their children. This trend is expanding to include children in special needs programs, resulting in an increasing number of questions from parents choosing to homeschool their children who are interested in continuing or obtaining special needs help from the schools. In many instances a special needs child shows tremendous gains just by being removed from the public school situation and educated at home by loving and caring parents who are able to provide the stimulation and enrichment each child needs and deserves. If services are offered the family is not required to accept them. Many families do just fine without government help, but if you need it, special needs services are available to homeschoolers.

A search of the Internet reveals several sites committed to special needs legal issues. The California Department of Education, <http://www.cde.ca.gov/sp/se/>, is a good place to start. Another good research site is [http://205.241.44.100/law\\_res/doc/index.html](http://205.241.44.100/law_res/doc/index.html). The federal government provides funding for special education, and the states must operate within the guidelines of the United States Code (USC) and the Code of Federal Regulations (CFR).

Families who choose to enroll their children in a public independent study program or charter school are entitled to the same special education services that are available to students enrolled in a traditional public school. (Ed. Code §56145.) This option is the easiest way for families to obtain special needs services because they fit into the statutory and regulatory parameters. Thus, there should not be any disruption of services for those families who are already receiving them, and new families should easily qualify for them.

Children with disabilities enrolled in private schools are also entitled to special education services. (34 CFR §300.451.) Therefore, families who use the private school option and follow the legal requirements for setting up a home-based private school, are entitled to the same special education benefits as any private school in California. However, the government is not required to provide services in addition to those available in the public schools. The extent of those benefits is covered by 34 CFR §300.450 et seq., 20 USC 1412 (a)(10), and California Education Code (EC) section 56170 et seq. A child in a private school is entitled to services "provided by personnel meeting the same standards as personnel providing services in the public schools"; "may receive a different amount of services than children with disabilities in public schools", and "[n]o private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school." (34 CFR §300.455.)

The state is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility." (20 USC 1412 (a)(10)(C).) Thus, the states have a certain amount of discretion when providing special education benefits to home-based private schools. If they argue that they offered a "free appropriate public education" that was rejected by the parents, they are not required to offer an additional services. These provisions are echoed by the California statutes (Ed. Code §§ 56170-56177.) As long as a "free appropriate public education" is provided to the child with the disability, the district is not required to reimburse parents for the cost of enrolling the child in a private school. (Ed. Code §56175.) Educational legal departments may interpret the law to not provide services to private school and home school students.

If you are determined to homeschool independently and to get special education services for your child, there are several legal options open to you. The Disability Rights Education and Defense Fund, Inc., <http://www.dredf.org>, based in Berkeley and Washington, D.C., is "a national law and policy center dedicated to protecting and advancing the civil rights of people with disabilities through legislation, litigation, advocacy, technical assistance, and education and training of attorneys, advocates, persons with disabilities, and parents of children with disabilities." The credentials of the participants and the successful advocacy of this organization are spectacular. Protection and Advocacy, Inc., <http://www.pai-ca.org/>, is a non-profit advocacy center with offices in Sacramento, Oakland and Los Angeles, that "works in partnership with people with disabilities " to protect, advocate for and advance their human, legal and service rights." Either of these groups may handle your case without cost or at an affordable cost if they decide it fits within their parameters for representation. In any event, they are a good source of legal information.

The Council of Parent Attorneys and Advocates, <http://www.copaa.net>, is not limited to California, but has helpful referrals and information.

Wrightslaw, <http://www.wrightslaw.com>, is a comprehensive site operated by Pete Wright (a Virginia attorney who represents children with disabilities and who struggled with learning disabilities himself) and his wife Pam Wright (a psychotherapist). It contains many informative articles and referrals. Another helpful resource is attorney Reed Martin, of West Virginia. As the parent of a child who needed special education services he has concentrated on special education rights for 32 years. He is another prolific writer, and has written much useful information. His web site is no longer up, but we'll put a link here if it returns. Ann Zeise's A to Z Home's

Cool, [http://a2zhomeschooling.com/concerns\\_homeschooling/special\\_needs\\_kids\\_homeschooling/](http://a2zhomeschooling.com/concerns_homeschooling/special_needs_kids_homeschooling/), has several additional resources.

After consulting with these groups, if you decide you need an attorney, make sure to thoroughly investigate at least three before hiring one. Obtain referrals from your friends, look in the phone book, contact the sites mentioned above, contact HSC, [legal@hsc.org](mailto:legal@hsc.org), the Association of Home School Attorneys, [referrals@ahsa-usa.org](mailto:referrals@ahsa-usa.org), and check the internet. After you get some names, check their membership status and discipline record on the California State

Bar site (<http://www.calbar.org>) and interview them on the phone. Make sure they support homeschooling and understand or be willing to learn homeschooling law and special needs law. Ask about their state bar disciplinary record, if they have one. Meet with them, and trust your instincts. Keep in mind that an attorney is your employee, and that educating yourself about your legal rights is your best protection.

The provision of special education services by the government is a complicated legal area, full of interpretation and argument. A relatively new area, it is growing rapidly. Recent court decisions clarify the law, and more cases are under submission. If both the provision of special needs services and homeschooling independently are critical parts of your education, research all of your alternatives thoroughly, starting with the resources in this article. On the surface, the law appears to support the denial of services if "free appropriate public education" is available, but the law is in flux. Therefore, if the services offered by the district do not meet your child's needs, it may be worthwhile to obtaining legal help to enforce your child's right to a "free appropriate public education".

<sup>1</sup> : Please note that public or charter schools are not obligated to approve a student's enrollment in or transfer to an independent study program. In some cases, the schools may decide that a student receiving services should remain in the traditional classroom setting, or should be denied admission to the charter. In most cases, funding and ease of administration are the motivations behind these decisions. Unfortunately, we are not aware of any legal basis to challenge these decisions [*Footnote added June, 2003*]