

Pulling Your Child Out of School

by Debbie Schwarzer, Esq.

Children with special needs often receive services from the public schools they attend because of a law saying that schools must provide a "free and appropriate education" to children; if special services are required to make the education appropriate for that child, then the public schools must provide them at no cost. When public schools identify children who they think need services, they prepare (with the participation of the family) an Individualized Education Program, or "IEP", which is a contract that requires, on the one hand, that the school take certain actions, such as providing specified services at specified times, and, on the other hand, that the family cooperate with this program. People often ask if special needs children who have received services under an IEP are required to attend or continue attending public school. The answer is no.

We have heard of many families whose children had IEPs but for whom the school situation was not working. In some cases, school staff has been abusive to children, in others, no real help was given, or the "help" wasn't helpful. In many cases, the parents have decided to pull their children out of school. Since many public school homeschooling programs won't take children with IEPs and charter school programs may be unavailable, often the best choice is for the parents to homeschool using the private school option. Many times, when the parents tell the school that they are withdrawing their child and enrolling him or her in a private school where they would teach him or her themselves, the schools have told them that they could not do that: the parents are told that because the child was subject to the IEP, the child was therefore required to be enrolled in the public school to continue to receive the "free appropriate public education" the school was providing.

This scenario, of homeschoolers rejecting the special education services that schools provide, is the opposite side of the question we sometimes receive about whether homeschoolers can request the public schools to provide special education services to their children (the answer is almost always no, the public schools are not obligated to provide services to children who are not enrolled in the school – if you want the services, you need to take the rest of the package). Are families with special needs children precluded from using private educational alternatives? Of course not. Just because a child has

been determined to be a special needs child and an IEP has been prepared for her, does not mean either that the child must be enrolled in public school or that her parents lose their constitutional right to choose the best educational alternative for their child. Parents can elect to place their child in a private school or facility. (20 USC 1412 (a)(10)(C); Education Code §56174. And, contrary to veiled threats that we have sometimes heard, it is not child abuse to refuse to enroll a special needs child in public school if the family is meeting the child's needs in other ways.

Withdrawing a child who has an IEP from public school is fundamentally no different from withdrawing any other child, and families considering doing this should read the information about withdrawing your child midyear. The only difference is that the families may also wish to terminate their obligations under the IEP contract (called "closing out the IEP"). It is the family's right to terminate this contract and relieve the school of its obligations. Legally, this is no different from canceling your newspaper subscription – as long as you had the agreement, the newspaper company had to deliver it (and you had to pay), but if you don't want the paper any more, you can cancel and the newspaper company no longer has to give you one, nor do you owe them any more money. The publisher can't claim that once you started getting the paper, you were therefore obligated to continue to receive it (and pay for it) for the next 12 years. Of course, this analogy isn't perfect. Parents are obligated to care for and educate their children, but they may choose how to do so, just as you may choose how to keep yourself informed. When you write a letter to formally withdraw your child from public school you can also inform them of your wish to terminate their IEP contract at that time as well.

In cases where the decision to withdraw comes after a period where the child has not been able to attend school for whatever reason (illness, emotional issues from abusive treatment by school staff, etc.) and the school has threatened or begun truancy proceedings, families may wish to join an existing charter school or larger private ISP just to deflect any arguments that the family's home-based school is not legal. We frequently recommend this tactic at least for the balance of the first year of homeschooling; after that year is over, the school system often forgets the child existed and no longer feels a need to hassle the family.

Some families have been challenged by schools, attendance officers or even CPS. In some cases, HSC's legal team has written a letter to government officials informing them of the legality of the family's choice. In our experience, we find that these officials are often either bluffing or ignorant of the law. It is important that you know your rights so you can provide the best educational alternative for your children.