

**THE RIGHT TO SPECIAL EDUCATION  
IN PENNSYLVANIA**

**A GUIDE FOR PARENTS**

**THE EDUCATION LAW CENTER - PA**

**2007 Edition**



# THE RIGHT TO SPECIAL EDUCATION IN PENNSYLVANIA: A GUIDE FOR PARENTS

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*This booklet was made possible, in part, by grants from the Disability Rights Network of Pennsylvania, with funding from the U.S. Dept. of Health and Human Services and from the U.S. Dept. of Education under the Protection and Advocacy for Individual Rights Act, P.L. 102-569; the Administration on Developmental Disabilities under the Developmental Disabilities Assistance and Bill of Rights Act, P.L. 101-496; and the Substance Abuse and Mental Health Services Administration under the Protection and Advocacy for Mentally Ill Individuals Act, P.L. 99-319. The contents are solely the responsibility of the Education Law Center and do not necessarily represent the views of the U.S. Department of Health and Human Services or the U.S. Department of Education.*

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The Education Law Center staff advocates for improved educational opportunities and outcomes for Pennsylvania's most educationally "at risk" public school students.

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## INTRODUCTION

This Guide describes the legal rules that govern the special education and early intervention programs in Pennsylvania for children from age three until schooling ends. ELC has a separate booklet that sets out the rules for children with disabilities under age three. We hope that the Guide will help you work with your school to get your child the support she needs.

An eligible child with a disability has important rights that are discussed in detail in this Guide. Some of the most important rights are:

- The right to a special education evaluation.
- The right to special instruction and support services that are set out in a written education plan called an Individualized Education Program (IEP) and that are free to the family.
- The right to receive special help in the regular classroom whenever the child can learn in that setting with supports.
- The right to have the school give you notice of its proposals for your child (or of the school's refusal to do what you have asked), to fix legal violations, and to resolve disputes through complaints to the state, mediation, or a formal hearing.

It is important to understand that the Guide is only intended to give you a general idea of the law. Each situation is different. If after reading this publication you have questions about how the law applies to your family, contact us for a referral or contact an attorney of your choice. In addition, Pennsylvania is now changing the state regulations that govern special education; new regulations should be in place by early 2008. When those regulations are final, we will revise this Guide - yet again - to make sure that it is current and accurate.

Throughout the Guide, we include links to Pennsylvania Department of Education (PDE) forms. The forms for children of school-age are "annotated," which means that each form contains suggestions designed to make the process easier and clearer for families

(<http://www.pattan.k12.pa.us/regsforms/annotatedformsandformats.aspx>). PDE's forms for preschoolers are not annotated  
(<http://www.pattan.k12.pa.us/regsforms/PreschoolFormsandFormats.aspx>).

At the end of this booklet we list organizations in Pennsylvania that might be able to help. ELC has many other publications on the legal rights of students. Check our website at [www.elc-pa.org](http://www.elc-pa.org). We also have a list of websites at the end of this booklet that may have helpful information. Good luck!

## **GETTING A SPECIAL EDUCATION EVALUATION FOR YOUR CHILD**

Before a child may benefit from any of the rights described in this Guide, the first question that must be answered is whether the child is eligible for special education, and that requires a special education evaluation.

### **IF I THINK MY CHILD MIGHT HAVE A DISABILITY AND NEEDS SPECIAL EDUCATION SERVICES, HOW CAN I GET THE SCHOOL TO EVALUATE HER?**

No child can start to get special education services until the school has completed an "initial" evaluation. The evaluation team must review all areas related to the child's suspected disability, including the child's health, vision, hearing, social skills and emotional status, general intelligence, academic performance, and communication and motor skills. The job of the evaluation team is to decide whether the child has a disability that makes it difficult for her to learn, and, if so, what special services and supports she needs. For more information on the types of disabilities that qualify a child for special education services, see <http://www.ed.gov/legislation/FedRegister/finrule/2006-3/081406a.pdf> at page 46756 (definition of "child with a disability" at 34 C.F.R. §300.8(c)).

If you think your child has a disability and needs special education, you should send a letter to the school asking the school to evaluate your child. See chapter entitled, *Sample Letter Requesting an Evaluation* to get you started.

In most cases, the school will send you a written notice that explains its evaluation plan, including the reason for the evaluation, when the evaluation will be conducted, any record or report the school is using, and the procedures and specific types of tests that will be used. The school will also ask you to sign a "Permission to Evaluate" form so that it can begin the evaluation. You can get the Pennsylvania Department of Education's (PDE) sample "Permission to Evaluate" form at [http://www.pattan.k12.pa.us/files/Forms/English/AnnPTE\\_072205.pdf](http://www.pattan.k12.pa.us/files/Forms/English/AnnPTE_072205.pdf).)

When the parent signs the Permission to Evaluate for an initial evaluation, she is given a "Procedural Safeguards Notice" that explains the family's rights. The Notice includes information on how the parent can disagree with how the evaluation was conducted or the results of the evaluation, and how the parent can request mediation or a special education hearing. PDE's sample Procedural Safeguards Notice can be viewed at:  
[http://www.pattan.k12.pa.us/files/Forms/English/PSN\\_070105.pdf](http://www.pattan.k12.pa.us/files/Forms/English/PSN_070105.pdf).

### **HOW QUICKLY MUST THE SCHOOL OR SCHOOL DISTRICT COMPLETE MY CHILD'S INITIAL EVALUATION?**

Unless you keep missing appointments for your child's evaluation, a school must evaluate your child and give you a copy of the Evaluation Report within 60 school days of the date you sign the school's "Permission to Evaluate" form. Charter schools have 60 calendar days to finish the evaluation from the date you sign the school's consent form. For children ages three to school-age, the deadline for the preschool early intervention agency to complete the initial evaluation and give you a copy of the Evaluation Report is 60 calendar days from the date you sign the Permission to Evaluate form.

**TIP:** Remember, the timeline for completing the initial evaluation does not begin to run until you have signed the Permission to Evaluate form. Don't let the school take too long to give you the Notice and the Permission to Evaluate. *Keep a copy of whatever you sign or send.*

### **WHAT HAPPENS WHEN THE CHILD MOVES TO ANOTHER SCHOOL DISTRICT BEFORE THE INITIAL EVALUATION IS COMPLETED?**

If you move into a new school district before the initial evaluation has been completed, the deadline for the school to finish the evaluation may be longer than 60 school days, but only if you and the school agree to a specific time when the evaluation will be completed and the school district is making sufficient progress to complete the evaluation quickly. The new and old schools must coordinate the

testing to evaluate the child as quickly as possible. The new school must promptly request the child's school records, and the old school must send the records within 10 school days.

## **HOW DOES THE SCHOOL DECIDE HOW THE EVALUATION OR RE-EVALUATION SHOULD BE CONDUCTED, AND WHAT TYPES OF TESTS SHOULD BE INCLUDED?**

The school must use a variety of testing tools and strategies to gather information on the child's development and academic and functional levels (functional level means, for example, whether the child has learned basic self-care skills). Information from the parent must also be considered. The evaluation is designed by a "team" of qualified professionals. There is no specific number or type of "tests" that must be given to a child as part of an evaluation or re-evaluation. However, the child must be assessed in all areas related to the suspected disability, and the evaluation must be sufficiently thorough to identify all of the child's special education and related services needs. All evaluations must be provided at no cost to the child or family.

The evaluation team must determine whether the child has a disability (or continues to have a disability) and needs special services. The team must also decide what services are needed for the child to meet the measurable annual goals set out in her Individualized Education Program (IEP) and to participate, as appropriate, in the general education curriculum offered to all students (or, for preschoolers, to participate in appropriate preschool activities).

The IEP Team (the group that develops the child's IEP) has a crucial role to play in reviewing the information from the evaluation team and determining whether additional testing of the child is necessary. In addition to the assessments and other evaluation materials from the evaluation team, the IEP Team must review at least the following: evaluations and information provided by the parent, current classroom-based local and state assessments and observations, and observations from the teachers and therapists. The Team, which includes the

parents, decides whether any additional information or testing is needed. The Team does not have to meet in order to make these decisions.

In most cases, when the Team is determining whether a child is eligible or still eligible for special education, a certified school psychologist must participate in this review. (For preschoolers, a psychologist does not have to participate in the evaluation process, but the parent can always ask that a psychologist participate).

If the IEP Team decides that no additional information is needed to determine if the child is eligible or still eligible for special education and the educational needs of the child, the school must tell the parent and explain why. In that situation, the school must also tell the parent that they can request further assessments.

Unless it is clearly not possible to do so, the evaluation must be conducted in the child's native language or other way of communicating (for example, sign language) that is most likely to produce accurate information on what the child knows and can do academically and functionally. The child must be assessed properly by trained and knowledgeable school personnel using reliable tests. Tests must be selected and administered to avoid discrimination based on the child's disability, race, or ethnic background. No one test (such as an IQ test) can determine whether a child has a disability or the child's educational needs.

The evaluation team cannot decide that a child is eligible for special education if the real cause of the child's learning problem is that the child has not had proper instruction in reading or math, or because the child does not know enough English. The team must also consider information from many sources, including teacher recommendations, the child's physical condition, the child's social or cultural background, the child's self-help skills, and any other information that will help the team make an accurate decision as to whether the child has a disability and needs special services, and what those services should be.

<p><b>TIP:</b> It is hard for a parent to decide whether the school's team of experts has considered all necessary information and whether the right tests have been used in the right way. If the family is working with an expert, show the expert the</p>
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information from the school and ask for advice. You might also want to consider an "independent evaluation." See chapter entitled, *Getting Your Child an Independent Educational Evaluation*.

## **WHAT IS DONE WITH THE RESULTS OF THE EVALUATION?**

The Team writes an evaluation report that includes a decision as to whether the child is eligible to receive special education. The evaluation report also includes recommendations to the IEP Team about the special education and related services the child needs. A school district must give the parent a free copy of this report at least 10 school days before the IEP Team meeting, unless the parent agrees to wait until the IEP Team meeting to get the report. PDE's sample Initial Evaluation Report form can be viewed at

[http://www.pattan.k12.pa.us/files/Forms/English/AnnER\\_072205.pdf](http://www.pattan.k12.pa.us/files/Forms/English/AnnER_072205.pdf), and the PDE Re-evaluation Report at [http://www.pattan.k12.pa.us/files/Forms/English/AnnRR\\_072205.pdf](http://www.pattan.k12.pa.us/files/Forms/English/AnnRR_072205.pdf).

## **WHAT IF I DO NOT WANT MY CHILD TO BE EVALUATED BY THE SCHOOL?**

Not every effort a school makes to determine how well a student is doing, or how to improve instruction, is a special education evaluation. A school can review existing information on a child or give the child the same test that is given to all other students without getting your permission. An example of a test that can be given without a parent's agreement is the Pennsylvania test called the Pennsylvania System of Student Assessment (PSSA) that is given to students in certain grades to determine their level of academic achievement. It is also not a special education evaluation when a teacher or specialist screens a student to determine how best to teach her, and a parent's agreement is not required in this situation either.

However, if the school wants to evaluate your child to determine whether she has a disability and needs special education, you must first give your written permission. If you do not sign the Permission to Evaluate form the school cannot evaluate your child. The school can ask a Special Education Hearing Officer to

order that the child be evaluated. Under certain circumstances, a family court judge can give someone other than the birth or adoptive parent the right to agree to an initial evaluation for a child in the custody of the Children and Youth system. But in most cases the family must consent in writing to the child's evaluation before the evaluation can take place.

**TIP:** Remember, agreeing that your child can be evaluated is not the same thing as agreeing that she can start getting special education services. Before your child can start to get special education services, an education plan (called an IEP) must be developed, and you must be asked to sign a separate form agreeing that your child can begin to receive special education services. If you decide that you do not want your child to receive special services, the school cannot deliver special education services and cannot overturn your decision through the special education hearing process.

### **DOES MY SCHOOL DISTRICT HAVE A DUTY TO FIND OUT IF MY CHILD HAS A DISABILITY EVEN IF I HAVEN'T ASKED FOR AN EVALUATION?**

Each school district must have a way of telling the public that children with disabilities who live in the district, and who need special help to learn, have certain rights. Even if their parents have not asked for help, each school district must have a way of finding and screening children (including children who are migrants, who are homeless, who are in the custody of the child welfare system, or who attend private schools) to decide whether they need a special education evaluation. A child can be screened because of academic concerns (screening should include testing the child's ability to handle an age-appropriate curriculum); because of behavioral concerns (screening should include careful observation of the child in the classroom or other place where the behaviors are a problem); or because of a vision or hearing problem.

Based on what it has learned, the school should try a new approach or instructional strategy, and then check whether the child's performance has improved. The school should also decide whether there is an explanation for the child's difficulties other than a disability, such as poor English language skills or a

history of poor instruction, and whether the child needs more than he can get in a regular classroom without special help. The family should be included in the screening process. If the screening process has lasted 60 school days and the child has not improved, the school must refer the child for a special education evaluation.

**TIP:** You do not have to wait until the screening process has been completed to ask for a special education evaluation. You can ask for a special education evaluation at any time, and the school must follow the process and timelines described above.

### **WHAT RULES APPLY WHEN MY CHILD NEEDS TO BE RE-EVALUATED?**

One purpose of a re-evaluation is to decide if the child still needs special services. The re-evaluation should also help the Team decide whether the child is making reasonable progress towards her goals, and, if reasonable progress is not being made, what changes are needed.

A child who is receiving special education must be re-evaluated least every three years unless the parent and the school agree that the three-year re-evaluation should not be conducted. Schools must re-evaluate preschoolers (children aged three to school-age) and school-aged students with mental retardation at least every two years. If within the three-year period the teacher or a parent requests that the child be re-evaluated, or the school decides that a re-evaluation is needed, the child must also be re-evaluated. The school does not have to conduct more than one re-evaluation each year.

**TIP:** Think carefully before you agree to pass on your child's three-year re-evaluation. Three years is a very long time in the life of a child. Even if the child's disability has not changed, her needs, strengths, and weaknesses may have changed, and those changes may show that the child's IEP should be revised.

A child has to be re-evaluated before a school can determine that the child is no longer eligible for special education. However, the school does not have to re-evaluate the child if the child will no longer be eligible for special education because she has graduated with a regular diploma, or because she is has aged-out of special education (which in Pennsylvania means has completed the school year in which she turned age 21). Under these circumstances, the school district must give the student a written summary of her academic achievement and functional performance. The summary must include recommendations on how to help the student meet postsecondary goals (school, employment, community living - whatever is appropriate for the child). You can view the Pennsylvania Department of Education's Summary of Performance and Recommendations at [http://www.pattan.k12.pa.us/files/Forms/English/AnnSOP\\_072205.pdf](http://www.pattan.k12.pa.us/files/Forms/English/AnnSOP_072205.pdf).

If you think that your child needs to be re-evaluated, you should send the school a written request. See chapter entitled, *Sample Letter Requesting a Re-evaluation* as a starting point. Just like the initial evaluation, the school should give you written notice of its evaluation plan and should give you a Permission to Reevaluate form to sign. A re-evaluation must be completed by a school and the re-evaluation report given to the family within 60 school days of the school district's receipt of the signed Permission to Reevaluate (or of the request of the teacher or the school's decision that a re-evaluation is needed). The Pennsylvania Department of Education's Permission to Reevaluate form is at [http://www.pattan.k12.pa.us/files/Forms/English/PTE\\_070105.pdf](http://www.pattan.k12.pa.us/files/Forms/English/PTE_070105.pdf).

For preschoolers, the re-evaluation must be conducted and the parent must receive the reevaluation report within 60 calendar days of the date the parent signed the Permission to Reevaluate form. The timeline for charter schools to complete re-evaluations is unclear.

**TIP:** Remember, the timeline for the school to complete the re-evaluation - like the timeline for completing the initial evaluation - dates from when you sign the Permission form. So make sure that you get and sign that form quickly so that the timeline for the re-evaluation will begin to run. *And keep a copy of whatever you sign or send.*

Unless the school district gets the permission of a special education Hearing Officer, it cannot conduct a re-evaluation if the parent states in writing that she does not want the child re-evaluated. However, the district can conduct a re-evaluation if it has made reasonable efforts to get the parent to agree and the family has not responded. For re-evaluations, the parent may request a copy of the Procedural Safeguards Notice, but the school or school district is not required to give the Notice to the family automatically.

**TIP:** Remember, the school cannot conduct the initial or first evaluation of the child without the parent's written consent, and it cannot conduct a re-evaluation of the child if you have stated in writing on the appropriate form that you do not want the child re-evaluated. The only exception is if a Hearing Officer orders an evaluation or a re-evaluation. But the school can conduct a re-evaluation without your permission if the school has tried to get your permission and you have not told the school district whether you agree or disagree.

### **ARE THE RULES DIFFERENT IF IT IS SUSPECTED THAT MY CHILD HAS A "SPECIFIC LEARNING DISABILITY?"**

**YES!** Recent changes to federal special education law added additional requirements for evaluating a child to determine if she has a specific learning disability. Pennsylvania, like other states, is now required to set statewide rules for how local school districts should decide whether a child has a specific learning disability, and until these rules are final many questions still remain.

However, some rules are already clear. The decision that a child has a specific learning disability is made by a team of experts that includes the parent, the child's regular teacher (or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of the same age as your child), and at least one person (such as a speech-language teacher, a remedial reading teacher, or a school psychologist) who has the skills to evaluate the child.

The team can decide that the child has a specific learning disability if the child is behind her classmates of the same age or has not met state standards in

language, reading, or math skills even though the child was given the right learning experiences and instruction, and either:

- The child is behind classmates of the same age or has not met state standards in language, reading, or math skills even though the school used a scientific, research-based strategy to improve her learning, or
- The child shows a pattern of strengths and weaknesses in achievement or performance as compared to classmates of the same age, in grade appropriate state standards, or in her intellectual development that the evaluation team, using appropriate testing, thinks shows that the child has a specific learning disability.

The team must also decide that the pattern is not really because the child has a problem with seeing, hearing, or physical development, because she has an emotional problem, because of cultural or environmental problems or poverty, or because the child has limited English skills.

The team has to be certain that the real cause of the child's learning difficulty is that the child has a specific learning disability, and not that the child did not have appropriate reading or math instruction. Therefore, the evaluation team must consider data that shows that, before or as part of the evaluation referral, the child received proper instruction from qualified staff in regular education classes. The team must also consider data-based records that the child's academic achievement was repeatedly tested while she was being instructed, and that this information was given to the child's parents.

As part of the evaluation, the team must have information on the child's academic or behavior difficulty based on an observation of the child in the regulation classroom or other learning environment. This information can come from a new observation by a team member, or from an observation and monitoring of the child's performance that took place before the referral for an evaluation. If the child is a preschooler, the child must be observed in a setting that is age-appropriate. The child must still be evaluated within the normal 60 school day timeline for completing a special education evaluation, unless the parent and a group of qualified professionals agree in writing to an extension.

The team must state in writing whether the child has a specific learning disability, the reason for its decision, that the decision was made using the rules set out above, what behavior was seen during the observation and how that behavior affects the child's academic learning, any relevant medical findings, and its findings on the eligibility factors. The team statement must also include information on learning strategies that were previously used to help the child, strategies to improve the child's rate of learning, and certain other information. Each member of the evaluation team must state in writing whether she agrees with the report, and if not what that team member's conclusions are.

### **WHAT CAN I DO IF MY CHARTER SCHOOL OR SCHOOL DISTRICT DOES NOT OBEY THE TIMELINES AND OTHER RULES?**

If the school doesn't conduct a complete and accurate evaluation or re-evaluation, you can request mediation or begin the process of requesting a special education hearing. If the school has violated a clear legal rule, such as the timeline for conducting an evaluation or re-evaluation, you can file a complaint with the Division of Compliance, Monitoring and Planning. The Division of Compliance complaint form can be found at <http://www.pattan.net/files/Formspdf/ComplaintForm.pdf>.

# GETTING YOUR CHILD AN INDEPENDENT EDUCATIONAL EVALUATION

## WHAT IS AN "INDEPENDENT EDUCATIONAL EVALUATION?"

An independent educational evaluation is an evaluation of a child that is done by a person who does not work for the child's school district, public charter school, or intermediate unit (IU).

## WHEN IS IT A GOOD IDEA TO GET AN INDEPENDENT EDUCATIONAL EVALUATION FOR YOUR CHILD?

It's a good idea to get an independent evaluation whenever you need more information, different information, or a second opinion about your child's disability and special education needs. An independent educational evaluation is most important when you believe the school's evaluation is not "appropriate." For example, you may want an independent evaluation if:

- the school's evaluation is not accurate (the wrong tests were used or the results do not seem correct to you)
- the school's evaluation is not complete (important testing was not done or the evaluation report does not give you enough information to decide if the child has a disability and to talk to the Individualized Education Program (IEP) Team about what services she needs)

You may also want to get an independent evaluation because you are about to go to a Special Education Hearing.

If you want the school to consider the results of the independent evaluation, you need to make sure that the person you hire has the same "credentials" the school would use to evaluate your child. Ask the school what "credentials" it uses to hire evaluators. For example, schools usually use psychologists with a

certificate in school psychology (called certified school psychologists) to test special education students. If you hire someone who has the right credentials, the school will have to consider the independent evaluation whenever an IEP Team makes decisions about what services or placement will help the child receive a "free appropriate public education." This does not mean that the school has to follow all of the suggestions in the independent evaluation report - the school just has to "consider" the information. The independent evaluation report may also be used as evidence in a Special Education Hearing.

## **DOES MY SCHOOL HAVE TO PAY FOR THE INDEPENDENT EDUCATIONAL EVALUATION?**

Parents can pay for their own independent evaluations at any time. But, you can ask the charter school or school district to pay for the independent educational evaluation if you disagree with the school's most recent evaluation (or re-evaluation) of your child. There is a limit: You only have the right to ask for one free independent evaluation for each school evaluation (or re-evaluation) of your child. The school can ask you why you disagree with its evaluation; but, if the school refuses to pay for the independent evaluation, it must schedule a Special Education Hearing.

If you ask the school to pay for the independent evaluation, the school has two choices. It may either (1) immediately agree to pay for the independent evaluation or (2) immediately request a Special Education Hearing. If the school requests a hearing, it will have to prove to a Hearing Officer that its evaluation was appropriate. Two outcomes are possible:

- If the Hearing Officer decides that the school's evaluation was not appropriate, the school may be ordered to pay for your independent educational evaluation.
- If the Hearing Officer decides that the school's evaluation was appropriate, it will not order the school to pay for your independent evaluation. You can still have an independent evaluation conducted (and the school will have to consider the results), but you will have to pay for it yourself.

Remember, the school has a right to evaluate your child before deciding whether she has a disability and what services she needs. Only if that evaluation is not appropriate will the school have to provide the independent evaluation at public expense. This means that you can't refuse to let the school evaluate your child and force it to pay for an outside evaluation instead.

## **WHERE CAN I FIND AN INDEPENDENT EVALUATOR?**

When you ask for an independent educational evaluation, your school should tell you the criteria it uses to conduct a similar evaluation. It should also tell you where you can get an independent educational evaluation -- schools usually do this by giving parents a list of the qualified evaluators that work nearby. However, the school cannot limit you to the evaluators on its list; you can pick any person in your area that meets the school's criteria.

## **WHAT SHOULD I EXPECT FROM MY INDEPENDENT EVALUATOR?**

That depends on the question you want the independent evaluator to answer.

- If you want to know whether your child has a disability and needs special education, you will want the evaluator to write a report that focuses on that question. You will probably also want the evaluator to include suggestions on the type of IEP services that he believes will help your child.
- Another question might be whether your child's current IEP is appropriate or whether changes should be made? If this is your question, be sure to give the evaluator a copy of your child's IEP. Ask the evaluator to write in his report which parts of the IEP need to be changed, how those parts can be changed, and why.
- You may want to ask whether your child can be educated in a regular classroom with supports. If so, ask your evaluator to write a report

explaining why your child can (or cannot) be educated in a regular classroom, and ask him to give clear information on what kinds of supports your child will need to succeed in the regular classroom. (For example, if your child needs a one-to-one behavioral aide, ask the evaluator to write that in his report and to explain why this is needed).

It is very important that the evaluator help you to understand what your child needs to make meaningful progress. The more detailed the recommendations (for example, what exactly should my child's IEP say), the more useful the evaluation report will be.

### **HOW DO I REQUEST THAT THE SCHOOL PAY FOR MY CHILD'S INDEPENDENT EDUCATIONAL EVALUATION?**

You should write a letter to your school with the following information:

- Tell the school that you think its evaluation (or re-evaluation) of your child was inappropriate, and that you are requesting "an independent evaluation at public expense."
- Although you are not required to do so, we recommend that you give the reasons why you think the school's evaluation is not appropriate.
- Explain what kind of independent evaluation you want (educational assessment, neuropsychological assessment, functional behavioral assessment, etc.). If you do not know what kind of evaluation would be best, ask the school.
- Ask the school for information on where an independent evaluation can be obtained and the school's criteria for evaluations.

**For example:** "I would like an independent evaluation at public expense because I do not believe that the September 26, 2006 re-evaluation of my son was appropriate. The re-evaluation does not include any testing of my son's behavioral and emotional needs and does not give any suggestions on how to keep him focused in class, even though his teachers have told me that he has a hard time paying attention and this is causing him to get poor grades. Please give me information on what type of evaluation can be done to address this issue and please let me know where I can go to get this kind of evaluation."

**TIP:** See chapter entitled, *Sample Letter Requesting an Independent Educational Evaluation*.

The district should answer your letter in writing within a reasonable time. If the answer is "no," the district must file a request for a Special Education Hearing. If the district does not answer your request and does not schedule a hearing, you can file a complaint with the state or you can ask for a Special Education Hearing. For a discussion of the range of options (complaints, mediation, hearings, etc.) for resolving this or other special education problems with your school, see chapter entitled, *How To Resolve Special Education Disputes*.

# DEVELOPING THE SPECIAL EDUCATION PROGRAM

## WHAT IS AN IEP?

An IEP, or "Individualized Education Program," is a written plan that describes a special education student's unique needs and explains the specific services that the school will give the child.

The IEP lists the special education, related services, and other supports the child needs to make real progress in school. The IEP should explain *when* the services will begin, and *how frequently* and for *how long* they will be given (for example, 2 half-hour sessions of physical therapy every week). The IEP must also state *where* the services will be provided (for example, in a regular or special education classroom or a special school), and tell you what special training and equipment will be given to the school staff (teachers and aides) who work with the child. The IEP also tells you how much of the school day the student will spend with classmates who do not have disabilities.

The IEP is written by a team of people including the parents and the school (more on this later). Public Charter Schools and public school districts *must* give the child all of the special education, related services, and other supports listed in the IEP. If the school does not follow the IEP, you can file a complaint with the Pennsylvania Division of Compliance, Monitoring, and Planning (DOC) (see chapter entitled, *How To Resolve Special Education Disputes* for a discussion of how to file a Complaint with the DOC.

## WHO WRITES THE IEP?

The IEP is written by a team of people. The IEP Team *must* include:

- the student's parent,
- at least one special education teacher or special education provider

(for example, the child's learning support teacher or speech therapist),

- at least one regular education teacher (but only if the child is in at least some regular education classes or if the child may be put in regular education classes),
- a school official qualified to provide or supervise specially designed instruction, who knows about the school's resources, and who is familiar with the general education curriculum (usually this is the special education director),
- someone who can interpret the child's evaluations (this does not have to be a separate person, so the special education director might fill this role—if it is a separate person, it is usually the school psychologist),
- the student.

The student must be invited to the meeting if her transition needs will be discussed at the meeting (this is required if the student will turn 16 during the next year). If transition needs are not going to be discussed, then it is up to the parent whether the student should attend the meeting.

A parent can agree in writing to excuse one (or more) of these IEP Team members. If the IEP Team member's area of expertise will not be discussed at the meeting, then the parent and school may sign an agreement that the Team member can miss the meeting. If the Team member's area of expertise is going to be discussed at the IEP meeting, before that Team member can miss the meeting: (1) a parent must agree in writing and (2) the Team member must give the parent written input about the student before the meeting. It is important for the parent to read this information before the meeting - if you have questions about what the Team member has written you can always ask the school district to schedule a new IEP meeting so that the Team member can attend.

***Remember that the school can NOT force you to allow a Team member to miss the IEP meeting. You should only agree to excuse a Team member from the meeting if you believe that that person does not need to be at the meeting for you to understand your child's needs or to develop an appropriate IEP for your child.***

*For example, the school may ask you to excuse your child's regular education teacher because she is too busy. Before agreeing, consider that the regular education teacher can explain how your child is doing in class, suggest positive behavioral strategies that can be included in the IEP, help the Team decide what supports should be provided for the student in the regular education classroom, help decide what support is needed for school staff who work with the child, etc. So, in almost all cases, you should require the teacher to come to the meeting. If you do agree for her to miss the meeting, be sure she gives you information in writing (and you read it) before the IEP meeting. Maybe you can talk with the teacher before the meeting!*

While the people listed above must attend IEP meetings (unless they are excused by the parent), other people can come to the meetings. The IEP Team can also include anyone the parent or the school believes has knowledge or expertise about the child. This means that a parent can invite an advocate (either a lawyer or a non-lawyer) to attend the IEP meeting or a therapist who is working with the child at home. If the child has just turned three and was receiving early intervention services, the parent can ask the school to invite someone from the Infants and Toddlers Early Intervention Program.

## **WHAT STEPS MUST THE CHARTER SCHOOL OR SCHOOL DISTRICT TAKE TO MAKE SURE THAT THE PARENTS CAN ATTEND THE IEP MEETING?**

The law places great emphasis on parents' participation in the IEP meeting. The school must take steps to get one or both of the child's parents to attend the IEP meeting. That means the school must notify parents of the meeting early enough so that they can attend, and schedule the meeting at a convenient time and

place. The notice of the meeting must tell the parent the time, date, location, and purpose of the meeting.

The meeting notice must also explain who will be at the meeting and tell the parent that she can bring anyone with her whom she thinks has expertise or knowledge about the child. The school must also provide interpreters for parents with deafness or parents whose native language is not English if the interpreter is necessary for the parent to understand what is being discussed at the IEP meeting.

If the parents cannot attend the meeting in person, the school must offer the family other ways of participating in the meeting, including conference calls. If the family does not participate in person or by phone, the school can hold the meeting without the parent - but it must keep a detailed record of its efforts to get the parent to attend.

## **WHAT SHOULD HAPPEN AT THE IEP MEETING?**

The school may give the parents a *draft* IEP at the meeting, but it cannot ignore the parents input or refuse to make changes that the parents and the school agree are needed. When it is finished, the IEP should reflect the information discussed by the Team at the meeting. During the meeting, the IEP Team must consider the child's strengths, the parents' concerns for enhancing the education of their child, and the results of the most recent evaluation in determining what services and placement are appropriate for the child.

## **WHAT SHOULD BE WRITTEN IN THE IEP?**

You may want to print out the Pennsylvania Department of Education's (PDE) sample "annotated" IEP form for children in Kindergarten through 12<sup>th</sup> grade to help you understand what should be in your child's IEP, [http://www.pattan.k12.pa.us/files/Forms/English/AnnIEP\\_072205.pdf](http://www.pattan.k12.pa.us/files/Forms/English/AnnIEP_072205.pdf). You can use this form to follow along as we explain the sections of the IEP. The sample form also has helpful comments that explain to the IEP Team what should be written in

the different sections of the IEP. Your school is not required to use PDE's IEP form, but if a different form is used it must contain all of the types of information we list below. (The sample IEP form for children from age three until they enter school can be found at

[http://www.pattan.k12.pa.us/files/Forms/English/EI\\_IEP\\_061705.pdf](http://www.pattan.k12.pa.us/files/Forms/English/EI_IEP_061705.pdf).)

Remember, an IEP can be of any length and can contain any amount of information. However, what is really important is whether the information in the IEP is genuinely useful to parents and school staff. Here is a quick review of the major sections of an IEP and some of the questions that the IEP Team members should ask as they write those sections.

## A WALK THROUGH THE IEP

1. **SPECIAL CONSIDERATIONS:** First, the IEP Team must ask whether the child is blind or visually impaired, deaf or hearing impaired, or if the child has limited English skills, or has needs in the areas of communication, assistive technology, or transition. The Team must also decide if the child's behaviors are affecting her learning. The Team should keep these "special considerations" in mind when it writes the child's IEP.

**TIP:** *If the IEP Team decides that the child's behaviors are affecting her learning, the IEP Team must consider and include in the IEP strategies to help the child. These strategies must reflect individual students' needs (not a "one size fits all" behavior plan) and be based on positive - not punishment - approaches. This could mean that behavior goals and support services are included in sections 5 and 6 of the IEP. Or, the IEP Team might write a behavior plan as part of the IEP. Questions to ask include: What sets off the child's bad behaviors at school? What skills should be taught to the child so they can behave more appropriately? If problems do occur, how will they be handled?*

2. **CURRENT EDUCATIONAL LEVELS:** The second section of the IEP contains information on the child's present levels of academic achievement and functional performance (including social and daily living skills). Questions that this section of the IEP should answer include: What can we learn about the child's strengths and needs from the latest school district and private evaluations? What insight can the parents or the other Team members contribute from their experiences? What were the child's scores in the last state or district-wide assessment (PSSA or PASA), and what do those scores tell the Team about the child's strengths and weaknesses? This section should include information on how the child's disability affects her involvement and progress in the regular education curriculum (or, for preschoolers, her participation in age-appropriate activities).
3. **PARTICIPATION IN ASSESSMENTS:** Third, the IEP Team decides whether the child can participate in state-wide and district-wide achievement testing (the Pennsylvania System of School Assessment or PSSA) and whether the student needs accommodations while taking the test. If the Team decides that the child is so severely cognitively limited that taking the PSSA will not be meaningful, the test that the child will take instead must be listed on the IEP. (For example, some students take the Pennsylvania Alternate System of Assessment or PASA test).
4. **TRANSITION:** The fourth section of the IEP form lists the student's post-secondary goals (these are goals for life after high school) and the transition services that the school will give the student to help her reach those goals. This section *must* be filled out for all students who will turn 16 during the year that the IEP will cover. The school and parent can agree to fill this section out earlier if that is appropriate for the child. Questions to ask include: What skills will the child need for adult living? Are the needed skills being taught? What does the IEP Team think should be the child's measurable post-secondary goals related to training, education, employment, and, where appropriate, independent living skills? Are these goals based on age-appropriate transition assessments and the

child's own preferences? (If not, why not?) What transition services (including courses of study) are needed to help the child achieve the transition goals?

**TIP:** Even if your child is not about to turn 16, it is often important to have the IEP Team fill out this section. For example, if your child is in eighth grade and wants to go to a vocational/technical high school next year, you should have the IEP Team fill out this Transition section. The Team should make sure the school helps your child take the right classes and then helps her apply to the right high school vocational/technical programs as part of her transition services! Why? By the time she is 16, it may be too late to apply!

5. **MEASURABLE ACADEMIC AND FUNCTIONAL GOALS:** The fifth section of the IEP explains what the IEP Team, including the family, wants the student to learn this year. The IEP must list annual (year-long) functional and academic goals for the child. These goals must be "measurable," and must be designed to meet the child's needs. If possible, the child's academic goals should be based on the regular education curriculum (that is, what students who are not in special education are supposed to learn at her grade level). This section of the IEP must explain how the child's progress towards her IEP goals will be measured and when progress reports will be issued (for example, the IEP might say that the school will report the child's progress every six weeks when report cards are normally handed out).

For students who will take the PASA or another alternative assessment test (see section 3 above), the law requires that the IEP has short-term goals in addition to annual goals. The short-term goals should break down the yearly goals into smaller objectives for the child to learn during the year. Short-term goals are not required for other students, but the IEP Team can choose to include them.

6. **SPECIFIC SPECIAL EDUCATION TO BE PROVIDED:** The sixth section of the IEP lists the modifications and supports the child needs to receive an appropriate education. The IEP Team should ask: What specialized instruction, methods, and strategies will be used by the school this year to help the child progress on her IEP goals, be involved and make progress in the general education curriculum, and participate in extracurricular and nonacademic activities? Are special gym classes (called "adaptive physical education") needed?

This section also includes the **supplementary aids and services** the child will receive. If your child will be taught in a regular education classroom, the IEP Team should decide what services and supports the child will need to succeed there. A student with a disability should not simply be "dumped" into a regular education class without supports. All aids and services needed for the child to succeed in the regular education class must be listed on the child's IEP and provided by the school. Questions to ask about supplementary aids and services include: Are changes to the regular education program needed to help the child succeed in regular education classes? For example, does the child need more time to take tests? Are extra supports needed for the child in the regular education classroom? For example, does the child need a one-on-one aide or assistive technology?

This section of the IEP also lists the **related services** the child will receive. Related services are services that will help the child benefit from her special education program and include transportation and physical, occupational, or speech therapy that the child will receive. The IEP must tell you how often these services will be provided and how long each session will last. (See ELC's Fact Sheet entitled, *When Is Your Child Entitled to Therapies or Other Related Services from Your School District?* for more information on related services).

This section of the IEP also tells you what help the school will give to the staff who will be teaching the child (called "**support for school**

personnel"). Staff that may need support include: administrators, regular education teachers, special education teachers, related service providers, and paraprofessionals (such as aides). Questions the IEP Team should ask include: Does the staff require special training to work with the child? Is a special education teacher needed to help the regular education teacher modify the curriculum or to provide extra support to the child in the regular education classroom?

The last question that the IEP Team must answer in Section VI of the IEP is whether the child needs **extended school year (ESY) services**. All children with a disability must be considered for ESY as part of their annual IEP meeting. ESY services are appropriate for a child who regresses (loses skills) over the summer or a child who needs the extra time in the summer to learn skills that are crucial for the child to receive an appropriate education. **For school-aged children with severe disabilities, the ESY question must be answered by the end of March so that the IEP Team can plan for the child's summer program.** See ELC's Fact Sheet entitled, *When Is Your Child with a Disability Entitled to Extended School Year (ESY) Services* for more information on this topic.

**TIP:** The law says that, whenever "practicable," all of the services (special education, related services, supplementary aids and services, etc.) offered to the child should be based on peer-reviewed research about what will be effective for the child. See below for more information on this requirement.

- 7. PLACEMENT:** The final two sections of the IEP explain where the child will receive services. The IEP must tell you if the child will be included in regular education classes and activities and, if so, for how much of the school day. The IEP Team must answer this question by considering what type of special education service and what type of special education support the child needs. The "type of service" tells

you where the child will get her special education needs met: either in the regular education classroom (this is called "itinerant support") or in a pull-out special education program (a resource room, or a part-time or full-time special education classroom). The "type of support" listed in the IEP tells you the child's most important learning needs - to learn academic skills (learning support), to control behaviors (emotional support), to acquire basic living skills (life skills), etc.

**TIP:** *Remember that students with disabilities must be taught with students who do not have disabilities to the maximum extent appropriate. If the child cannot be in regular education classes for the whole school day, the IEP Team must consider what part of the child's program (including academic classes, non-academic classes, lunch, recess, and extracurricular activities) the child can attend with children who are not disabled.*

The "**location**" of the program is also found in this section of the IEP. If the child will not be in her home school, the IEP must explain why the child's needs cannot be met in that school. Questions the Team should ask: What school is recommended for the child? Can the services on the IEP be delivered in that school? Is the location as close to home as possible? The law prefers (but does not require) that children with IEPs be educated in the classes and schools they would attend if they did not have disabilities, and that they attend a school that is as close to home as possible.

**LEAST RESTRICTIVE ENVIRONMENT:** This section also contains information that the State uses to track whether school districts are placing students with disabilities in programs with students who are not disabled, as opposed to separate special education programs.

## WHEN MUST THE IEP BE WRITTEN?

An IEP must be in place for each child receiving special education services at the beginning of each school year. If your child has just been evaluated for the first time, an IEP meeting must be held within 30 *calendar* days of the date listed on the Evaluation Report. The law requires the school to give the parent 10 *calendar* days to review the Evaluation Report before this first IEP meeting, but many parents choose to waive (give up) this right and to have the meeting sooner.

## WHAT HAPPENS AFTER THE IEP HAS BEEN WRITTEN?

After the IEP has been finalized, the school must give the parents a copy of the IEP along with a form called the Notice of Recommended Educational Placement (NOREP). The NOREP form asks the parents to say (in writing) whether they approve of the IEP. If the IEP Team has just written the child's first IEP, special education services cannot start unless the parent approves of the IEP in writing on the NOREP. For later IEPs, the new IEP can start if the parent returns a signed NOREP that has the "I approve" box checked or if the parent does not return the NOREP at all within 10 *calendar* days.

When the IEP is approved, the school must explain to its staff their responsibilities, and the specific supports, modifications, and accommodations that they must give the child under the IEP. The IEP document itself must also be available for the staff to review. "Staff" includes: the child's regular and special education teachers, her related service providers, and any other person who is responsible for following the IEP.

## WHAT IF I DON'T AGREE WITH THE IEP OFFERED BY THE DISTRICT?

If you do not agree with the proposed IEP and placement, you should **check the "I do not approve," box on the NOREP.** You then have a number of options - requesting a meeting, mediation, or a special education hearing. For more information on which option to choose, see chapter entitled, *How To Resolve Special Education Disputes*. If your child has not been in special education before,

unless you and the school agree otherwise, your child will stay in regular education classes while you are resolving your dispute with the school.

If you like parts of the new IEP, but not all of it, you can ask the school to start some of the new IEP services while you work out your areas of disagreement. For example, if you and the school agree on your child's new academic goals and services, but disagree about the amount or type of related services that your child needs, then the school should agree to begin providing the academic services to the child while you use mediation or a hearing to figure out what should be included in the related services part of the new IEP.

### **WHEN MUST THE SCHOOL START FOLLOWING THE NEW IEP?**

A child in a public school must be given the services in her IEP (at the location listed on the IEP) no later than 10 *school* days after the IEP is completed. For preschoolers with disabilities (between age three and school-age), the services must be given to the child within 14 *calendar* days of the parents' agreement with the IEP. These timelines do not apply to public charter schools, but charter schools are required to provide students with the services on their IEPs "as soon as possible" after the IEP is written.

### **HOW OFTEN ARE IEPs REVIEWED AND CHANGED?**

The IEP Team must meet every year to review and revise the IEP based on: the child's progress on her annual goals, the child's progress in the general education curriculum, any re-evaluations that have been done, and parent or teacher concerns.

*If the parent agrees, the IEP can also be amended (changed) between the yearly meetings without holding an IEP Team meeting. The IEP amendment must be in writing. The school must tell all of the IEP Team members about the change. A parent should always request a copy of an IEP amendment -- the school does not have to give you a copy unless you ask for it.*

While the school must make sure the IEP Team meets every year, parents have the right to ask for more IEP Team meetings. The law does not limit the number of IEP meetings parents can request. If your child is having problems, and you believe that her IEP should be reviewed, send a letter to the school and ask for an IEP meeting. If the school does not have the meeting quickly, the parent can request a "pre-hearing conference," file a complaint, request mediation, or request a hearing. (For more information on these options, see chapter entitled, *How To Resolve Special Education Disputes.*)

### **WHAT HAPPENS IF MY FAMILY MOVES TO A NEW DISTRICT OR MY CHILD DECIDES TO ENROLL IN (OR LEAVE) A CHARTER SCHOOL?**

If a student with an IEP from a public school district or a charter school moves to a new school district or charter school, the new school must provide the child with a free appropriate public education. This means that the child must be given services comparable to those in the last IEP until the new school either (1) adopts the old school's IEP as its own or (2) implements a new IEP that has been written at an IEP Team meeting with the family. This rule applies whenever a child moves from one public school or charter school to another public school or charter school during the school year - even if the child moves to Pennsylvania from another state! However, if the child is coming from another state, the school may ask the parents for permission to evaluate the child before writing a new IEP. But in the meantime, the child must be given services comparable to those in the last IEP. If the child changes schools *over the summer*, the new public school district or charter school can choose either (1) to follow the old IEP or (2) to write a new IEP with the family before the school year begins.

Whenever a child changes school districts (or goes to a new charter school), the new school must request the child's school records, including the IEP and other special education records, from the old school. The law says the new school has to make this request "promptly." The old school must respond to this request by sending the records. If the old school is in Pennsylvania, then it has 10 *school* days to send the records to the child's new school. (If the old school is out of state, it must respond "promptly.")

## **WHAT IF THE CHILD LIVES IN A RESIDENTIAL FACILITY, HOSPITAL, OTHER CHILD CARE FACILITY, A GROUP HOME, OR A FOSTER HOME?**

The school district where the foster home, residential facility, or group home is located is responsible for the child's regular and special education services. Just like children who live with their parents, children in residential facilities have a right to be educated in the "least restrictive" setting that is appropriate for the child, including the local public schools. If the child's IEP cannot be provided in the local school system, the local district must make sure that the child receives all needed special education services. This could include contracting with the child's residential facility so the child can attend a school run by the facility.

## **WHAT ARE RELATED SERVICES (ESPECIALLY SCHOOL HEALTH SERVICES AND ASSISTIVE TECHNOLOGY)?**

**Related services** are support services that some children with disabilities need to benefit from special education. Examples of related services a child can receive are transportation, therapies (speech, physical, occupational, or psychological therapy), interpreting services for children who are deaf, parent training and counseling, and school health services.

**School health services** address a child's medical or health problems that interfere with the child's ability to attend school or to learn properly. Services that can be provided by medically trained personnel - including nursing services and school health services - must be provided when the child needs them in school (although often the services are funded through Medical Assistance). But school health services do not include treatment that can be performed only by a physician. Schools also have to arrange for medical evaluations if necessary to diagnose a child's disability or to determine what kind of special education or related services the child needs.

**Assistive technology devices and services** are another kind of related service. Assistive technology devices include devices or special equipment that help with the child's functional or communication skills (for example, a wheelchair or a special computer that the child uses to "talk" to her peers). Assistive

technology services include help in choosing the device, and training to the child, school staff, and possibly the child's family on how to use the device.

The district can use another public agency to pay for or provide a service that the child needs, but the service must still be listed on the child's IEP and guaranteed by the school district.

*For example, an IEP Team may decide that a child needs one-to-one support for a severe behavioral disability and write that in the child's IEP. If Medical Assistance is willing to fund wraparound or Therapeutic Staff Support (TSS) workers to go to school with the child, the school can use those staff to provide the one-to-one aide. However, because the one-to-one aide is listed in the IEP, the school is responsible making sure the child gets the service. So, for example, if the TSS worker is sick or quits, the school must itself provide the one-to-one aide to the child.*

### **WHAT DOES IT MEAN FOR THE CHILD'S SPECIAL EDUCATION, RELATED SERVICES, AND SUPPORTS TO BE BASED ON PEER-REVIEWED RESEARCH?**

In general, the school has the right to pick the instructional approach and method that will be used to teach the child. But, special education law requires that special education, related services, and supplementary aids and services (supports the child needs to be successful in a regular education classroom) included in the IEP be "based on peer-reviewed research to the extent practicable." This means that, if there are strategies that research studies show are successful in helping students with similar learning needs learn successfully, those strategies must be included in the child's IEP - instead of approaches that don't have a proven track record of success.

*For example, if your child has dyslexia and difficulty reading, the school should choose teaching programs and strategies that have been proven to work for students with dyslexia. You should ask your school for the*

*research that supports its choice of a reading program. If there is no research supporting the program, you can ask the school to pick a program that has been proven by research. Even if the schools' program is based on research, if it is not working for your child, a new program may be needed for your child's IEP to be appropriate.*

**TIP:** *If you are working with a private evaluator or expert, ask them to look at the research on what programs work for other children with your child's disability.*

For lots more information on research-based practices and effective instruction, visit the Pennsylvania Department of Education's website at <http://www.pattan.k12.pa.us>.

## **WHAT DOES IT MEAN THAT MY CHILD MUST BE GIVEN THE SERVICES SHE NEEDS TO MAKE PROGRESS IN THE GENERAL EDUCATION CURRICULUM?**

The IEP Team must decide how the child's disability affects her progress in the general education curriculum that is offered to all children in the school district. The "general education curriculum" means the curriculum that your school follows for students without disabilities. The school's curriculum must line up with the state standards that describe what all children at the same grade level are expected to know. You can review Pennsylvania's state standards at <http://www.pacode.com/secure/data/022/chapter4/chap4toc.html>.

Children with disabilities should be taught what all other children at their grade level are taught unless there is a good, disability-based reason why they should be taught at a lower level. The school cannot refuse to include the child in the general curriculum solely because the general education curriculum would need to be modified for the child.

In order to help school districts prepare their students for statewide assessments, the Pennsylvania Department of Education has developed "assessment anchors." Assessment anchors tell schools which parts of the state standards are

most important for children to learn. The assessment anchors are also helpful because they explain what students are expected to learn in simpler terms than the state "standards" and they include helpful examples on what to teach the children and how. For lots of information on assessment anchors and to get a copy of the Department's assessment anchor "tool kit," visit [http://www.pde.state.pa.us/a\\_and\\_t/cwp/view.asp?a=108&q=103127&a\\_and\\_tNav=|6309|&a\\_and\\_tNav=|](http://www.pde.state.pa.us/a_and_t/cwp/view.asp?a=108&q=103127&a_and_tNav=|6309|&a_and_tNav=|).

**TIPS:** *The "assessment anchors" are a great place for a parent to start if she wants to make sure her child's IEP lines up with the general curriculum. For example, you may want to ask the IEP Team to write IEP goals that are based on these anchors (since they are considered the most important concepts in the general curriculum).*

*Remember that the IEP Team must include someone who is "knowledgeable about the general education curriculum." You should ask this person to take the lead in making sure your child's IEP goals line up with the general curriculum.*

Even though it is the school's job to make sure that each student's IEP is designed to help the child progress in the general curriculum, it is important for a parent to advocate forcefully for her child's inclusion in the general education curriculum. After all, the general education curriculum is what the State and your school have decided is important for all children to know so they can succeed in their post-school life.

## **WHAT DOES IT MEAN THAT MY CHILD MUST BE EDUCATED, TO THE EXTENT POSSIBLE, AND WITH SUPPORTS, IN A REGULAR EDUCATION CLASSROOM?**

Children with disabilities have a right to be educated in a regular education classroom if they can make reasonable educational progress in that setting (and if their behaviors aren't too disruptive in that setting) when they are given extra

supports. These supports are called "supplementary aids and services." The question is not how the child will learn or behave in the regular education classroom alone - but how they will learn and behave in that classroom when they are given supplementary aids and services.

The student does not have to learn at the same level as her classmates without disabilities to be taught in a regular education classroom - she just needs to make reasonable progress in her IEP goals. The IEP Team decides whether and for how much time a student with a disability can be educated in a regular education classroom, and that decision must be included in the "educational placement" and "least restrictive environment" sections of the IEP form. Because of a lawsuit against the state (called *Gaskin*), school districts must include lots of detailed information in the child's IEP about the child's placement. For more information on the *Gaskin* lawsuit and settlement, visit <http://www.pattan.k12.pa.us/regsforms/CourtOrdersGaskin.aspx>.

Even if a student with a disability must be in a "pull-out" program for some of her academic classes (for example, if she needs a resource room for reading), the student should remain in the regular education setting (with supports if needed) for the rest of her academic classes and for non-academic and extracurricular activities (lunch, recess, music class, etc.).

## **WHERE WILL YOUR CHILD GET SERVICES?**

### **WHAT PLACEMENT OPTIONS SHOULD BE AVAILABLE IN MY SCHOOL OR SCHOOL DISTRICT?**

The law requires all charter schools and school districts to have a *continuum* of regular and special education programs available for their students. The options available should include: regular education classes with support services, part-time and full-time special classes in regular schools, and, for children whose needs cannot be met in a public program, private schools that can meet the needs of children with disabilities. Pennsylvania law also requires school districts to offer their students a range of special education services and support programs such as learning support, emotional support, life skills, and autistic support programs. School districts usually operate some specialized classrooms, and many send students to classrooms run by the local Intermediate Unit (IU) or use the IU's resources in other ways.

### **HOW WILL MY CHILD'S PLACEMENT BE DECIDED?**

The family is part of the Team that decides what educational placement will work for the child. The Team must also include a school district staff person knowledgeable about the meaning of the evaluation data and the school or school district's placement options. The school or school district must give the parent a written invitation to the meeting at which the educational placement decision will be made and must make the same effort to include the parent that applies to Individualized Education Program (IEP) Team meetings (in fact, these decisions are usually made as part of the IEP process). The school or school district can make the placement decision at a meeting that does not include the parent, but only if it can document that it made repeated efforts to include the parent, including offering alternate means of participating such as video conferences and conference calls.

The decision must be based on the child's individualized needs. When an IEP Team meets, the Team must first discuss and write the child's IEP, which outlines the child's strengths and weaknesses, identifies the child's learning goals for the year, and lists the amount and type of special services the child needs in order to make educational progress at school. (For more information on IEPs, see chapter entitled, *Developing the Special Education Program*. At the end of the IEP form, the team must write down how much time the child will spend in a regular classroom, and how much time (if any) she will spend in a pull-out special education program. If the child needs a pull-out program to make educational progress, the Team must decide *what kind of* separate program the child needs and for *how much* of the school day.

Children with disabilities have a right to be educated in a regular classroom if they can make reasonable educational progress in that setting (and if their behaviors aren't too disruptive in that setting) when they are given extra supports. These supports are called "supplementary aids and services." The question that the IEP Team should ask is not how the child will learn or behave in the regular classroom alone - but how they will learn and behave in that classroom when they are given supplementary aids and services. Even if a student with a disability must be in a "pull-out" program for some of her academic classes (for example, if she needs a resource room for reading), the student should remain in the regular education setting (with supports if needed) for the rest of her academic classes and for non-academic and extracurricular activities (lunch, recess, music class, etc.).

Some examples of supports that can be helpful to a student with a disability in a regular class are special equipment (such as a modified desk or a communication device), a modified regular education curriculum, or help for the student or the student's teacher from a special education teacher or aide. In this way, the child is included and supported within the general student population and the general education curriculum.

For children attending school in public school districts, the IEP Team also decides the *type of support* the child needs. This decision is based on the child's most important learning need. If the child most needs to focus on academic skills,

a "learning support program" might be selected. If the child needs to learn to control behaviors that interfere with her learning, the choice might be an "emotional support" class. Or if a child needs to learn basic life skills such as dressing, feeding, or basic academics, a "life skills support" class might be selected.

Finally, for children in school districts and charter schools, the IEP should list the "location" in which the services will be provided. If the school is offering the family a program in the local Intermediate Unit, a private school, or other location outside the regular school building, the IEP must list the specific school or facility that is recommended for the child. The facility that the Team chooses must provide all of the services that the Team has included in the child's IEP. For example, if the Team writes in the IEP that the child needs an hour each day of special education help in a regular classroom in her neighborhood school, the neighborhood school must make sure that she has that help.

Like all special education decisions, the placement decision must be based on the child's individual abilities and needs as described in the child's IEP and evaluations. The school CANNOT refuse to allow a child to attend a regular classroom for reasons that have nothing to do with the child's needs. In addition, the law says that the school CANNOT refuse to allow a child to attend a regular classroom simply because the curriculum used in that classroom has to be modified for the child because of her disability.

**For example:** A school CANNOT decide to place a child in a special education classroom (instead of a regular classroom) because:

- There is no room in the regular classroom for more students, but there is room in the special education classroom
- It is more convenient (or costs less money) to put all of the special education students together than to spread them out in different regular classrooms
- The school has a policy of putting all children with autism

in a full-time autistic support classroom (if your child can succeed in a regular classroom with extra supports, that placement must be offered)

A student with a disability should be placed in the same school she would attend if she were not disabled (her "neighborhood school") unless her special education needs require that she be educated elsewhere. The school chosen for the child should be as close as possible to the child's home. The law does not *completely require* that all children with disabilities attend their neighborhood schools or that they attend the closest schools - but these are factors that must be considered when the Team decides what school to offer the child.

#### **ARE THERE RULES THAT LIMIT CLASS SIZE OR THE AGE RANGE OF THE STUDENTS IN THE CLASS?**

When the child is attending a class in a school district or IU-operated program for children in K-12<sup>th</sup> grade, the other children in her class must be near her age. The maximum age range allowed in classrooms serving students with disabilities is three years for grades K-6, and four years for grades 7-12. The IEP Team can decide that an exception to this rule is appropriate for a particular child, but it must explain in the IEP why it made an exception to the rule for that child.

State law also sets out the maximum number of children that can be on a special education teacher's roster in the various types of special education support programs (for example, learning support, life skills support, and emotional support). For the text of the regulation, visit:

[www.pacode.com/secure/data/022/chapter14/S14.142.html](http://www.pacode.com/secure/data/022/chapter14/S14.142.html). A school district can not go beyond the numbers in this regulation unless it first gets approval from the Department of Education after a process that gives parents, teachers, and others a chance to comment on the proposed changes.

## HOW DO I KNOW WHERE MY CHILD WILL RECEIVE SERVICES, AND WHAT IF I DON'T AGREE WITH THE PLACEMENT CHOSEN BY THE SCHOOL?

After the IEP has been written, the school district or charter school must give the family a "Notice of Recommended Educational Placement" (NOREP) form that tells the family what "placement" the school is recommending for the child. The "placement" listed on the NOREP usually does not include the "location" at which the program will be offered (but, as we explain above, that information must be listed in the IEP). Instead, the NOREP must explain the type of special education service (full-time, part-time, etc.), and the type of educational program (life skills, emotional support, etc.) the school is offering the child. The NOREP should also explain what other placement options the Team considered and why the Team decided those choices were not right for the child.

If the parent agrees with the offered IEP and placement, she should check "I approve the recommendation" on the NOREP. If the parent disagrees with the offer, she should check "I do not approve the recommendation" on the NOREP and select one of the options for resolving disputes, which range from a meeting with school district officials to a "Due Process" Hearing. If the parent wants to try to persuade a special education Hearing Officer that the placement the school or school district is offering is not appropriate (this mostly means that the child's IEP cannot be provided at the offered placement), the parent must check the "I do not approve" box on the NOREP and the box for a Due Process Hearing, AND must also file a request for a hearing with the school district and the state's Office of Dispute Resolution. With the school or school district's consent, the family can also try mediation. (For more information on each of the options listed on the NOREP, including how mediation and the special education hearing system works, see chapter entitled, *How to Resolve Special Education Disputes*.)

If the child will be receiving special education services *for the first time*, the school cannot start services without the parent's written agreement. That means, if you don't check the "I approve this recommendation" box and return the NOREP, special education services will not begin.

If the child is already receiving special education services and the school is proposing a change in the child's placement that the parent does not like, the parent must check the "I do not approve this recommendation" box on the NOREP and give it to the school district within 10 *calendar* days. (If you lose the NOREP form, you can give the school district a letter saying that you do not agree with the school's proposal within the same time period.) **In addition**, *if you want to stop the school from changing your child's placement while you challenge the new placement at a hearing*, you must also check the box requesting a "Due Process" hearing and follow through with the process for filing a hearing complaint. (See chapter entitled, *How to Resolve Special Education Disputes* for the details.) You can choose one of the other options on the NOREP (mediation, a pre-hearing conference, or a meeting with the school or school district), *but unless you also properly request a hearing, the school will have the power to change your child's placement while the dispute is being resolved.*

If you miss the 10-day deadline for returning the NOREP and requesting a hearing, you can still challenge the proposed placement at mediation or at a hearing. *But, in the meantime, the school can move your child to the new classroom and your child will have to stay in the new placement until you get a decision in your favor from a special education appeal panel, or until you have successfully completed all steps in the hearing and appeal process.*

## **WHAT IS A PARENT'S CHANCE OF SUCCEEDING IN CHALLENGING THE SCHOOL DISTRICT'S OFFER OF A PARTICULAR SCHOOL THROUGH THE SPECIAL EDUCATION HEARING SYSTEM?**

If the school refuses to allow the child to attend a regular classroom, and the parents believe the child could succeed in that setting if the school gave the child the proper supports, they may want to go to a hearing. Every case is different and we cannot predict whether you will win, but your chances of winning will be better if you have an expert who can testify at the hearing and explain to the Hearing Officer how your child could succeed in a regular classroom with supports. The law strongly favors educating children with disabilities in regular

classrooms with needed supports, so parents have a leg-up when they are challenging a school district's offer of a separate classroom or facility which is limited to children with disabilities. (For more information on getting an independent expert, see chapter entitled, *Getting Your Child an Independent Educational Evaluation*).

However, in most other kinds of cases, if the parent agrees that (a) the IEP offered to the child (including the type of service and type of special education support program) meets the child's needs; (b) the IEP can be provided at the proposed location; and (c) the child is placed in the "least restrictive" setting appropriate to the child's needs, the parent will probably not have a legal basis for refusing to accept the placement or location that is being offered in the IEP. But a parent might be successful in challenging the location offered in the IEP if the child is being placed in a school that is not as close to home as possible or if the child is not being placed in the neighborhood school (if there is no disability-related reason that the neighborhood school cannot serve the child).

# **SCHOOL DISCIPLINE AND STUDENTS WITH DISABILITIES**

## **HOW CAN DISCIPLINE PROBLEMS BE AVOIDED?**

When the IEP Team writes a child's Individualized Education Program (IEP), it must consider the child's behaviors. The IEP Team should ask two questions: (1) Do the child's behaviors hurt the child's ability to learn? (2) Do the child's behaviors hurt other students' ability to learn? If so, the IEP Team must decide whether there are positive behavioral interventions, supports, and other strategies that should be included in the child's IEP. If the behaviors do not improve, the IEP may need to be changed.

If you think that your child's behaviors are harming her success at school, you should write to the principal and request an IEP Team meeting. If the school will not meet with you or if you have a meeting and you aren't happy with the result, you may need to go to mediation or a hearing to solve the problem. (For more information on these options, see chapter entitled, *How To Resolve Special Education Disputes*.)

At the IEP meeting, the family should discuss the problems the child has at school and suggest changes that might help stop the behaviors. You should also ask the school for some suggestions. You can request that your child receive a "functional behavioral assessment" (an evaluation of what things cause the misbehavior) that can be used to write a "Behavioral Intervention Plan" (BIP). You should make sure that the behavior plan is part of your child's IEP and is based on positive measures designed to help, not punish, your child.

***TIP:** Some questions to ask include: how can the teacher be a better "manager" of the classroom; does the child need counseling or a crisis intervention plan; what can be done to prevent disruptive behaviors; and is the teacher gathering on-going data to help figure out if the behavior plan is working?*

For more information on evaluating students' behavioral needs and developing appropriate behavior plans, visit [www.pattan.k12.pa.us/teachlead/Behavior.aspx](http://www.pattan.k12.pa.us/teachlead/Behavior.aspx).

## **WHEN SHOULD A PARENT GET NOTICE THAT THE SCHOOL HAS DECIDED TO DISCIPLINE HER CHILD?**

State law requires a school to inform the family and the student whenever it intends to suspend or expel any student from school. *Sometimes the school wants to punish the child so severely that it is called a "change in placement"* (see below for more information). If it is a change in placement, the school should give the family a Notice of Recommended Educational Placement or NOREP. The school must include a copy of the "Procedural Safeguard Notice" (a document that explains the student's and family's legal rights) with the NOREP. The NOREP tells the family how the school or school district is proposing to discipline the child and why. It also gives the family information on what other options the school or school district considered, and gives the family the opportunity to agree or disagree with the proposal. If you agree, the school can discipline your child. If you disagree, the school must follow the rules outlined below for a "change in placement."

## **WHAT PUNISHMENT CAN THE SCHOOL IMPOSE ON MY CHILD?**

The school cannot punish a student with a disability more harshly than it would punish a student without a disability under the same circumstances. The

school must follow the same rules it applies to all students. For example, the school can only punish a child if they break a rule that is listed in the school's code of conduct. You should get a copy of the code of conduct at the start of the year. If you do not have a copy, you should ask to see the copy that is kept in the school's library.

Sometimes, the rule that the student broke allows the school to expel her, transfer her to another school (in Pennsylvania often called alternative schools for "disruptive students"), or suspend her for a long time. If this is what the school wants to do, then a student with a disability may have extra protections under special education law. To see if these protections apply, you must first figure out if the discipline the school is proposing counts as a "change in placement."

### **Question 1: Is the Proposed Discipline a Change in Placement?**

- **Students with mental retardation at public school districts or charter schools:** Any suspension, expulsion, or transfer to another school is considered a change in placement - even a one day suspension.
- **Other students with IEPs who attend public school districts:** An expulsion is a change in placement. A suspension or transfer to another educational setting (including an alternative school) for more than 10 *school* days in a row OR for more than 15 total *school* days in the school year is also a change in placement.

*For example: if your child has already been suspended two times this year for seven days each, the next time the school district wants to suspend your child it will be a change in placement (because it will reach the 15-day mark).*

- **Other students with IEPs who attend charter schools:** If a public charter school wants to expel a student or to suspend a student for more than 10 *school* days in a row, it is a change of placement. A "pattern" of suspensions, is also a "change in placement." To figure out if the child had a "pattern" of

suspensions, you should ask if: the child has been suspended for a total of more than 10 days in a school year and another suspension is being proposed; the child is being suspended for behavior that is "substantially similar" to behavior for which the child has previously been suspended; the length of each suspension; the total time the child has been suspended; and how close together the suspensions have been.

**TIP:** *It is not always clear when a suspension is part of a "pattern." So, if you think your child has had a "pattern" of suspensions, tell the charter school that you think the rules for a change in placement must be followed. If the charter school doesn't agree, you can request a mediation session or a special education hearing. (See chapter entitled, How To Resolve Special Education Disputes.)*

### **If the proposed discipline is NOT a change in placement**

The public school or charter school may discipline your child using the rules that apply to students without disabilities. (Philadelphia students have special rights and a separate ELC Fact Sheet.)

### **If the proposed discipline IS a change in placement**

If the discipline is a change in placement, the school must hold a manifestation determination meeting.

### **Question 2: Was the behavior a manifestation of the child's disability?**

The school must have a manifestation determination meeting within 10 school days of its proposal to change the child's placement. While you are waiting for the meeting, the school may not transfer your child to a new school setting or force you to keep your child at home unless the child's misbehavior involved drugs, guns,

or serious injury to another person, or if a Hearing Officer has found that keeping your child in the same program would be dangerous for the child or others. We discuss these "special circumstances" and the "dangerousness" exception in more detail below.

The parent and any members of the IEP Team that the parent and the school agree are needed must come to the manifestation meeting. The Team should review information from the child's file, the child's IEP, teacher observations, and information from the parent and then ask if the child's misbehavior was a "manifestation" of her disability. The Team should ask two questions:

1. Was the child's misbehavior caused by, or directly and substantially related to, the child's disability?

*For example: if your child has a hearing impairment and did not follow the teacher's directions to stop talking and sit down because the child could not hear the directions, the Team should decide that the misbehavior meets this test.*

2. Was the child's misbehavior a direct result of the school's failure to follow the child's IEP?

*For example: A child might have a behavior plan allowing her to go to a cooling off room (like the guidance office) when she is upset. If the child yells at a substitute teacher who has refused to let her go to the guidance office (maybe because the substitute does not know about the behavior plan), then the child's behavior might meet this test.*

If the answer to either question is "yes," the Team must conclude that the child's misbehavior was a "manifestation" of her disability.

**If all the Team members agree the child's behavior WAS a "manifestation" of her disability:**

If the school and the family agree that the student's misbehavior was a manifestation of the student's disability, the student **CANNOT** be suspended, expelled, or transferred to a new school setting as punishment for the misbehavior. (The only exceptions are if the child's misbehavior involved drugs, weapons, or serious injury to another person - see the "special circumstances" rules below). In addition, the IEP Team must conduct a functional behavioral assessment for the child unless one has already been done. The school must also either develop a behavior intervention plan or review and revise the plan that already exists.

**If all Team members agree that the child's conduct was NOT a "manifestation" of her disability:**

The school can discipline the child the same way it disciplines students who do not have disabilities. This includes a long-term transfer to a new school or an alternative school, or even an expulsion by the local School Board. However, even if the child is expelled from school, she must still receive special education services (more below).

**What happens if the school decides that the child's conduct was NOT a manifestation of her disability and the parent disagrees?**

If the school decides that the behavior was not a "manifestation" of the disability, it may discipline the child. The parent can request a special education hearing to challenge this decision. The hearing must be concluded within 20 school days, and the Hearing Officer must reach a decision in 10 more school days. If the Hearing Officer agrees with the parent that the child's behavior was a

manifestation of the disability, he must order the school to return the child to the placement she was in before the misbehavior.

**Question 3: What happens if my child's misbehavior involved drugs, a weapon, or serious injury to someone (special circumstances)?**

A student's misbehavior is a "special circumstances" if it involves illegal drugs, weapons, selling prescription drugs, or serious bodily harm to another person at school or a school-related activity. "Serious bodily injury" must be really serious to count - pushing someone (even a teacher) or scratching them should not be enough. Call us if you have questions about this rule. If your child's misbehavior is one of these "special circumstances," the school can immediately move your child to an alternative educational setting (alternative school) for up to 45 *school* days **even if the child has mental retardation, and even if the school agrees with the parent that the misbehavior was a "manifestation" of the student's disability.**

For example, if your child has mental retardation and a teacher finds a marijuana joint in your child's pocket, the school can immediately transfer your child to an alternative school for up to 45 school days. The school must still have a "manifestation" meeting within 10 school days. If the Team decides that having the joint was a manifestation, it must conduct a functional behavior assessment and/or revise your child's behavior plan, but your child can still be forced to stay in the alternative school for the rest of the 45 days.

**Are there other ways that a school can send my child to (or force my child to stay in) an alternative school without my permission?**

Remember, a school can always transfer a child with a disability to an alternative school if the parent agrees. Remember also, even when the parent disagrees, the school can transfer the child to an alternative school if either (1)

the behavior is not a manifestation of the disability and the school's published discipline rules allow the child to be transferred for his misbehavior, or (2) the behavior involved drugs, a weapon, or serious injury to another person.

In addition, a school also has the power to ask a Hearing Officer to transfer the child to an alternative school for up to 45 school days - even if the child has not done anything wrong at school. The school must prove to the Hearing Officer that keeping the child in the current placement is dangerous. (The test is whether keeping the child in her current school "is substantially likely to result in injury to the child or to others.") If the school cannot prove this to the Hearing Officer, then the child may not be transferred.

If your child has already been transferred to an alternative school for 45 days because her misbehavior involved a "special circumstance" (drugs, weapon, or serious injury to another person), a school can ask a Hearing Officer to order that she stay in the alternative school for another 45 school days. The school must prove that it would be dangerous to return the child to her old IEP setting.

**If my child has been suspended, expelled, or transferred to another educational placement, will she still receive any special education services?**

Any student who is suspended has the right to make up the school work she misses. This State law applies even if the suspension is so short that it doesn't count as a "change in placement."

If a school "changes the placement" of a child with a disability, federal law requires the school to provide her with enough educational services to participate in the general education curriculum and make progress on her IEP goals. This is true even if the child has been expelled or transferred to an alternative school. In addition, when the school "changes the placement" of a child for discipline reasons, it must hold an IEP meeting to schedule a functional behavior assessment for the child (if one hasn't already been done). This assessment should give the IEP Team information on the things that "trigger" the child's misbehavior and give the Team

suggestions on how to prevent the misbehavior. The IEP Team should also write or revise the child's behavior plan.

### **What if I think my child has a disability, but she does not have an IEP?**

The rules in this chapter apply if the school "had knowledge," *before the student's misconduct*, that the child had a disability - even if your child didn't have an IEP. The law says that a school district or a charter school is considered to have "knowledge" that the child has a disability in three situations:

1. The parents have expressed a concern that the child needs special education in writing to the child's teacher or school administrator; or
2. The parent has requested an evaluation; or
3. The teacher or other school staff expressed specific concerns about the child's pattern of behavior to the director of special education or other supervisory personnel of the school.

If none of these rules apply to your situation, your child can be punished by the school under the rules that apply to students who do not have disabilities. However, if the parent requests an evaluation while the child is being punished (for example, after your child has been sent to an alternative school or expelled), the school must conduct the evaluation quickly. If your child is found eligible for services, the school must meet with you to develop an IEP (see chapter entitled, *Developing the Special Education Program*). For the rest of your child's punishment (while she is expelled or in the alternative school), your child must be given enough services to participate in the general curriculum and progress toward her IEP goals.

It is important to note that a school does not have to follow the special education discipline rules if: (1) the parent has refused to allow the school to evaluate the child in the past, (2) the parent has refused special education services for the child in the past, or (3) the school evaluated the child in the past and concluded that the child did not have a disability.

### **Can the school report my child with a disability to the police?**

Special education law does not stop a charter school or school district from reporting a crime to the police. With the parents' (and in some cases the student's) consent, the school must forward the child's discipline and special education records to those authorities.

### **Do the same rules apply when a child is "suspended" from the school bus or is placed in in-school suspension?**

The same rules that apply to out-of-school suspensions apply to in-school suspensions if the student will be removed from her special education program or placement. A proposed suspension from the school bus is also subject to the same rules as a proposed out-of-school suspension if transportation is listed on the student's IEP.

For example, if your child acts out on the bus, the school may want to suspend your child from the bus for three weeks. If so, you need to check to see if bus transportation (sometimes called "door to door" transportation) is listed as a related service on your child's IEP. If it is, then removing your child from the bus for three weeks counts as a "change in placement" (since it is for more than 10 school days in a row). The school must hold a manifestation determination meeting within 10 school days and also must have an IEP meeting to arrange for a functional behavior assessment (if not already done) and draft or revise a behavior plan for your child on the bus. If your child's behavior IS a manifestation of his disability, then the school cannot change your child's placement (so, after 9 school days, your child must be allowed back on the bus!).

### **Does the law prohibit any forms of discipline?**

State law prohibits public school districts from ever using the following

types of discipline for students with disabilities:

- corporal punishment
- punishing a student for behavior that is an outgrowth of the student's disability
- using "noxious" substances (for example, pepper sauce or mace)
- withholding meals, fresh air, or water,
- serial suspensions
- electric shock
- locking or keeping the student in a room, space, or box from which he or she cannot easily leave, and
- any treatment that is demeaning.

**What happens if the parent cannot reach agreement with school officials?**

If the family and school officials cannot agree on any of the issues discussed in this section, the parents can use the Special Education Procedural Safeguard System described in chapter entitled, *How To Resolve Special Education Disputes*. Examples of the types of issues that may require a hearing include: what should be in the child's behavior program; was the misbehavior a "manifestation" of the child's disability; did the school have "knowledge" that a child without an IEP had a disability before the misbehavior; or was there a safety issue that justifies putting the child in an alternative setting over the family's objection.

# HOW TO RESOLVE SPECIAL EDUCATION DISPUTES

## WHEN MUST A FAMILY BE GIVEN A "PROCEDURAL SAFEGUARDS" LETTER?

Once a year, the public charter school or school district must provide the parent with a "Procedural Safeguards Notice" that lists and explains the child's and family's rights—including how to request mediation or a special education hearing, or how to file a complaint about a decision that the school has made. The school also has to give a family a copy of the Procedural Safeguards Notice whenever the parent requests a copy, before an initial evaluation, and when a parent requests a special education hearing or files a complaint. Your school may offer you the option to get this and other notices by e-mail and may also post a copy of the notice online.

## WHEN MUST A SCHOOL GIVE A FAMILY WRITTEN NOTICE (NOREP) OF WHAT IT IS PROPOSING (OR REFUSING) TO DO?

A parent must be notified in writing when a school:

- wants to evaluate or re-evaluate the child
- believes that the child is (or is not) eligible for an Individualized Education Program (IEP)
- proposes to change the child's disability classification,
- or proposes a change in the child's IEP or a "change in placement."

**TIP:** If your child gets in trouble at school, remember any suspension or expulsion for more than 10 school days in a row or for more than 15 school days in the school year is a "change in placement." If your child has mental retardation, any suspension - even for one day - is a "change in placement." (See chapter

The school or school district must also send the parent a written notice if it refuses the parent's request to do any of these things.

The written notice is usually called a "Notice of Recommended Educational Placement" or NOREP. It should be written in the parent's native language or mode of communication (ex: Braille). The NOREP explains: (1) what the district is proposing or refusing to do, (2) the other options the district considered, and (3) why those other options were rejected. The NOREP must also describe any evaluations or records the school used to make its decision and tell the family that it can ask for a copy of the Procedural Safeguard Notice. The written notice should also let the family know where to get help understanding their rights.

### **WHAT SHOULD I DO WHEN I RECEIVE A NOREP FROM MY CHARTER SCHOOL OR SCHOOL DISTRICT, AND HOW CAN I PREVENT THE SCHOOL FROM CHANGING MY CHILD'S IEP IF I DISAGREE?**

The NOREP has several "boxes" that you can check to show that you approve or disapprove of the school district's proposal. If you agree with the school's proposal, you should check the "I approve" box.

If you disagree with the school's proposal, check the "I do not approve" box. You should write on the NOREP your reasons for disagreeing with the school's proposal and also choose what you want to happen next:

- a meeting with the school
- a Pre-Hearing conference (a meeting that must take place within 10 days, this is only an option for school districts, not charter schools)
- mediation

- a due process hearing (also called a special education hearing)

Think carefully about this choice. If you want to stop the school from following its proposal (for example, changing your child's IEP) you *must* check the box that says "Due Process Hearing." In addition, you *must* send a request for a hearing to the school and to the Office of Dispute Resolution. See the rules for requesting a special education hearing below. If you want, you can check more than one "box." For example, you can ask for both a hearing and mediation. If you do that, you can have a hearing sooner if the mediation session doesn't resolve the problem.

If your child has never received special education services before, the school must get your written agreement/signature at each stage of the process (evaluation, IEP development, placement decision).

- If you refuse to sign for an initial evaluation (or you don't answer the school's request for an evaluation), the school can request a hearing and ask a Hearing Officer to order the evaluation. But this only works for kids in public or charter schools: A hearing cannot be used to force the initial evaluation of a private school student or a home-schooled student.
- After the first evaluation, if you do NOT want your child to receive any special education services, your word is final (you can refuse by checking "I do not agree" on the NOREP or by not sending the NOREP back to the school). The school CANNOT go to a hearing to force you to develop an IEP or to force your child to go to a special education classroom.

*You have less control if your child already has an IEP and the school wants to change the child's disability category, IEP, or placement. In these cases, the school must give the family a NOREP that describes the proposed change. If you disagree with the school's proposal, but forget to send the school a signed copy of the NOREP with the "I do not approve" box checked within 10 days, the school may assume that you are okay with the change. All is not lost: you can still disagree with the school at an IEP meeting, pre-hearing conference, mediation or a due process hearing in the future. But, in the meantime, the school can go ahead with its*

proposed changes until you later win at a hearing.

## WHAT SHOULD I DO FIRST IF THINGS AREN'T WORKING FOR MY CHILD AT SCHOOL?

Parents sometimes disagree with the evaluation, Individualized Education Program (IEP), or placement the school offers their child. Other times, the parents agree at first, but after awhile change their minds because things just do not seem to be working. For example, your child may not be getting enough help to understand his class work, may still have serious behavior problems, or may not be learning enough in a life skills program. Here are some steps you can take if that happens:

Talk with the child's teacher or other school staff by phone or in person. Ask if the teacher sees the same problems and can suggest any changes in the classroom that might help. Ask to see any assessments (tests) and copies of the child's work. Other things to ask: Are all of the services in the IEP being provided? Does the class have more students than state law permits? Are there some classes or times of day that seem harder for your child? Are the teaching strategies working for your child? Does your child need a "functional behavioral assessment" - an evaluation of the best ways of dealing with his or her behavior? Are there ways the family can help by working with the child at home?

Write to the principal and request an IEP Team meeting to discuss whether changes in the child's IEP would help. At the IEP Team meeting, you can raise the same kinds of issues listed above. You can also ask whether the IEP goals need to be changed; whether the child is making less progress than everyone expected; whether more or different related services are needed; and any other questions you have about the child's IEP and placement.

When you meet with the school staff, here are some things to think about:

- If no one knows what to do differently, perhaps your child needs a re-evaluation. An "instructional" evaluation may identify better strategies to help teach the child, and a "behavior assessment" can show what changes are needed to the behavior program. *Remember, all needed evaluations must be done without cost to the family.* (See chapter entitled, *Evaluating Your Child* for more information.)
- If you want a re-evaluation, ask to sign the "Permission to Re-Evaluate" form as soon as possible (at the meeting if possible). Remember, a school district has 60 school days from the day you sign the Permission to Re-Evaluate form to finish the re-evaluation and give you the Report.
- If a re-evaluation will be done, ask if the Team can agree to some short-term changes to the IEP in the meantime. A word of caution: Do not rely on what the school district *says* it will provide to your child. The IEP is like a contract - the school only has to give your child what is written in the IEP. So, make sure the school writes the change into the IEP, and make sure that the IEP is clear that the change will only last until the results of the re-evaluation if that is what is desired. (See chapter entitled, *Developing The Special Education Program* for more information on IEPs.)
- If you think there will be problems at the IEP meeting, you may want to ask the school to agree to IEP Facilitation. IEP facilitators do not work for the school (they work for the Pennsylvania Office of Dispute Resolution "ODR"). A facilitator can come to the meeting and help the school and family solve difficult problems. IEP facilitators are not Hearing Officers so they CANNOT order the school or parent to do anything. But sometimes having a facilitator at the IEP meeting can lead to a good outcome. For more information on IEP Facilitation, check the ODR website at <http://odr.pattan.net/mediation/IEPFacilitation.aspx>, or call ODR at 1-800-222-3353.

## WHAT IF I'VE FOLLOWED THESE SUGGESTIONS AND THERE ARE STILL PROBLEMS WITH MY CHILD'S IEP OR PLACEMENT?

Your options include filing a Division of Compliance (DOC) complaint, going to mediation, requesting a Pre-Hearing Conference, or requesting a due process hearing.

## WHEN SHOULD I FILE A DOC COMPLAINT?

If you (a parent) believe the school is not following the IEP or the school is not following the laws or required timelines, you should file a complaint with the State's Division of Compliance, Monitoring, and Planning (DOC). You can only complain about things that happened within the past calendar year. (So if it is December 2, 2006 you can only complain about things that happened after December 2, 2005). If you also ask for a special education hearing, DOC will not investigate any issues that are also listed in your hearing request. Advocates and advocacy organizations can also file DOC complaints, either about a specific child or about a districtwide or statewide problem. You can even file a complaint against the state!

A parent should ***not*** file a DOC complaint about any of the following issues: (1) the school's decision that the child is (or is not) eligible for special education, (2) the amount or type of services the school offers in an IEP, (3) the placement the school offers to a child. For example: if you believe your child needs one hour a week of physical therapy, but the school is only offering an IEP with one hour a month, this is not an issue for a DOC complaint. Why? DOC will not decide whether an IEP is appropriate - you will have to ask for mediation or a special education hearing to settle this question.

Parents can also call DOC's Special Education ConsultLine at 1-800-879-2301 if they have questions about special education law or their child's IEP. (If you call from outside Pennsylvania, dial 717-541-4960 ext. 3332.) The ConsultLine also

helps parents with filing DOC complaints, and may refer the parent to outside agencies for more help.

## HOW DO I FILE A DOC COMPLAINT?

To file a DOC complaint, you can fill out the "Consumer Request Intake Form" that is found at the following website: [http://www.pde.state.pa.us/special\\_edu/lib/special\\_edu/Consumer\\_Request\\_Intake\\_Form\\_91603.pdf](http://www.pde.state.pa.us/special_edu/lib/special_edu/Consumer_Request_Intake_Form_91603.pdf). Or, if you don't want to use that form, you can send a letter to DOC.

Either way, the following information must be in the DOC complaint:

1. the child's name, school, and address (or contact information if the child is homeless)
2. a statement that the school (or the state) has broken a special education law

For example: "The school has not followed the law because it took more than 60 days to evaluate my son" or "I believe the school broke the law because it isn't giving my daughter the two hours of speech therapy a week that is written in her IEP."

3. any facts you know about the problem

For example: "The speech therapist quit in September and my daughter has not had any therapy even though it is written in her IEP."

4. a proposed solution to the problem (if you can think of one). If you want the school to make up for services the child missed, you should ask for "compensatory education services." Or, you may want to ask the school to reimburse you (pay you back) for services you think the school should have provided.

For example: "I would like DOC to make the school hire a new speech therapist immediately and I want compensatory education services for the speech therapy that my daughter missed."

5. your contact information and signature

You should attach copies of any papers that help explain your problem, such as a copy of your child's IEP, to the DOC complaint form or letter.

DOC complaints should be sent to:

Division of Compliance, Monitoring and Planning  
Pennsylvania Department of Education  
Bureau of Special Education  
333 Market Street  
Harrisburg, PA 17126-0333

\*\*\*You must also send a copy of the complaint to the school.\*\*\*

DOC has 60 calendar days to investigate your complaint and issue a report. If the school and parents agree, they can use mediation to solve the complaint (but DOC must still give a report in 60 days unless you agree to give it more time). As part of the investigation, you can give DOC additional information by phone or in writing. The school will also be given a chance to explain itself and to offer a solution to the problem. If the DOC report says that the school broke the law, it

must tell the school what it has to do to correct the problem (called "Corrective Action"). DOC must follow up to ensure that the school completes all of the "corrective action."

## WHEN SHOULD I USE MEDIATION?

Mediation is free and voluntary (this means that both the school and the parent have to agree to use mediation or it will not take place). It can be a quick and informal way to resolve disputes. How does it work? A "mediator" is assigned by the state Office of Dispute Resolution — this person does not work for the school and is trained to help people reach agreements. The mediator will schedule a mediation session within seven to ten days of your request. The mediation session must be held at a place that is convenient to you. All discussions at mediation sessions are confidential (private) and cannot be used by the school or the parent in any future special education hearings or court cases. So, you should not worry about saying "the wrong thing" at the session.

The mediator will meet with each side separately, and then both sides together, to help solve the problem. Neither the school nor the parent can bring their lawyer to the session, but the school must send someone who has the power to make decisions for the school. If the school and parent reach an agreement, it must be put in writing and signed by the parties. If the agreement requires a change in the child's IEP, the school or school district should hold an IEP meeting to make the changes to the IEP. If the school signs the agreement but doesn't follow it, you can go to court to enforce it. For a lot more information on mediation, check out the ODR website at <http://odr.pattan.net/>.

If you would like to use mediation, you can download and fill out the mediation request form: [http://odr.pattan.net/files/odr/mediation\\_request.pdf](http://odr.pattan.net/files/odr/mediation_request.pdf). If you do not have access to a computer or the internet, call 1-800-992-4334. You can also start mediation by checking the "box" for mediation on a NOREP.

**TIP:** On a NOREP, you can either check only the box for mediation or check both the mediation and the hearing boxes. If you only check the box for mediation, you will not start the hearing process rolling. If you check both boxes on the NOREP, then the hearing timelines will begin while you and the school have the mediation session (this means the hearing can happen faster if mediation fails).

## WHEN SHOULD I REQUEST A PRE-HEARING CONFERENCE WITH MY SCHOOL DISTRICT?

Families can ask a school district (but not a charter school) for a Pre-Hearing Conference (PHC) to discuss a problem. To request a PHC, you can check the Pre-Hearing Conference box on a NOREP. Or, if you want a PHC but you don't have a NOREP from the school, you can write to the principal and request a "Pre-Hearing Conference." (Keep a copy of the NOREP or the letter.) If the school district agrees to meet with you, it must schedule the Pre-Hearing Conference within 10 calendar days of the date it receives the NOREP or your letter. (The school does not have to meet with you, so you may be forced to ask for mediation or a hearing.)

At the PHC, if the parent and the school agree to change the child's services or placement, the agreement must be written in the child's IEP. The new services or new placement must begin within 10 school days of the meeting. But, after the meeting, you have five calendar days to change your mind and cancel the agreement reached at the PHC (the school cannot change its mind, though).

**TIP:** Although there may be times where a PHC is useful, changes in the law give you less reason to pick this option.

**Why?** A PHC does not start the hearing process timelines rolling. In addition, if the PHC doesn't solve the problem and you later request a hearing, you will have to meet with the school anyway at a "resolution session" (see the

information on hearings below). So, it might be better (or at least quicker) to ask for a hearing and go to the resolution session instead of a PHC.

## **HOW DO SPECIAL EDUCATION HEARINGS WORK?**

A parent can request a special education hearing to resolve disputes with either a charter school or a school district. Sometimes the school is the one who requests a hearing (for example, if the school wants to deny your request for an independent evaluation). Almost all of the rules that apply when a parent requests a hearing also apply when a school requests a hearing - give us a call if you have any questions.

### ***How do I request a hearing?***

To request a hearing, you can check the "Due Process Hearing" box on a NOREP. But, that is not enough. You must also send a letter, called a "complaint," to the school that includes certain information (you can attach this letter to the NOREP when you send it back to the school). You must also mail a copy of the "complaint" letter to Pennsylvania's Office of Dispute Resolution at: 6340 Flank Drive, Suite 600, Harrisburg, PA 17112-2764. ODR's fax number is (717) 657-5983, and the e-mail address is [odr@pattan.k12.pa.us](mailto:odr@pattan.k12.pa.us).

You can request a hearing even when you have not been given a NOREP by the school - just write the "complaint" letter and mail it to both the school and to ODR.

### ***What information must a special education hearing request contain?***

A special education hearing request or "complaint" letter must contain the following information (in as much detail as possible):

1. The child's name, school, and home address (or contact information if the child is homeless);
2. An explanation of the problem(s)

For example: "The school wants my son to stay in his emotional support class, but for the last two years he has been in that class and getting bad grades because he is bored. His therapist says he would do better in a regular classroom where the school work is more challenging. I asked the school to change his class at the last IEP meeting, but they would not agree so I am now asking for a hearing."

### 3. When possible, any suggestions you have for solving the problems

For example: "I would like my son to be moved to a regular education classroom and given compensatory education for the time he spent in the inappropriate emotional support classroom."

If the school thinks the parent's "complaint" letter is missing some of the required information, it has 15 calendar days to tell a Hearing Officer that it thinks the request is "insufficient." If this happens, the Hearing Officer has five calendar days to make a decision and notify the parties in writing. If the Hearing Officer rules that a request is "insufficient," the hearing will not be scheduled. At that point, you can either "amend" your request to add the missing information (see below) or you can start over by writing a new "complaint" letter and sending it to the school and to ODR.

**TIP:** Before you ask for a hearing in your "complaint" letter, think carefully about the problems that you want the Hearing Officer to decide. The Hearing Officer is only allowed to decide issues that you include in your "complaint" letter - if you forget something you can't bring it up later on unless the Hearing Officer or the school allows you to "amend" your request (see below).

### ***Is there a deadline for requesting a hearing?***

A parent must request a hearing within two years of the date that the parent knew (or should have known) about the problems listed in the Complaint. The only exceptions to this rule are when the parent was prevented from requesting a hearing because the school specifically misrepresented that the problem was solved, or because the school did not give the parent information about the problem that it was required to provide under the law. For example, if you want a hearing because you think the school should not have stopped giving your child speech therapy, you must file the complaint within two years of receiving the IEP and NOREP that no longer include speech therapy. But, you might be excused for waiting longer than two years if the school never gave you a NOREP or IEP telling you the speech therapy was stopping!

**TIP:** If the problems have been on-going for more than two years, you can still request a hearing but the award you will be given (if you win) may be limited.

**Example:** you might only win two years of compensatory education if the school gave you a NOREP telling you it was changing your child's IEP and you waited three years to ask for a hearing.

### ***Can I change my hearing request?***

A parent can "amend" a hearing request if one of two things happens: (1) the school agrees to your amendment, or (2) if the Hearing Officer agrees to let you amend the complaint more than five calendar days before the hearing was scheduled to start. But, if you amend your complaint the timeline and other requirements for a hearing start over again - which is why it is important to get it right the first time if at all possible.

### ***Does the school have to reply to my hearing request?***

If the school has not already given you a NOREP that explains its reasons for each of the actions that you are complaining about in your hearing request, it must send you either a NOREP or a written response to the issues you have raised

within 10 calendar days of receiving the "complaint" letter. If the school already gave you a NOREP that covers all the issues, it doesn't have to send you a new NOREP.

### ***What happens after the hearing request and the school district's response?***

Within 15 calendar days of receiving the "complaint" letter, the school must schedule a "resolution session." A resolution session is a meeting with the parent and any IEP Team members who have knowledge of the facts in the hearing request. The family can bring an advocate or a lawyer to the meeting. But, if you do not bring a lawyer, the school can't bring its lawyer. The school must send someone to the meeting who has decision-making authority. Any agreement reached at the meeting must be put in writing and signed by the parties. After the meeting, the parent and school have three business days to change their minds and cancel the agreement. If the school doesn't follow the agreement, you can go to court to ask a judge to force them to follow it.

There are two ways to skip the resolution session. If you have already had a mediation session about the issues in the "complaint" letter, you can skip the resolution session. Or, the parent and the school can agree in writing to skip the resolution session.

### ***When does the hearing begin?***

The resolution session and mediation are designed to help the parties avoid a hearing. If the problem is not resolved, the hearing can be scheduled if:

- It has been 30 calendar days after the school received the parent's "complaint" letter and the parent went to a resolution session and doesn't think the problem was fixed.
- It has been 15 calendar days since the school received the parent's "complaint" letter and the school has not scheduled (or has failed to show up at) a resolution session, then the parent can ask the Hearing Officer to schedule the hearing.

However, the hearing will not start if the parent skips a resolution session.

In fact, if the school can show that the parent hasn't cooperated in scheduling the resolution session (or has failed to go to the session), the school can ask the Hearing Officer to dismiss the complaint. If this happens, you will have to start the hearing process over with a new "complaint" letter.

### ***What rules apply at the hearing?***

The family (and the school) have the right to bring a lawyer to the hearing. The family may also bring non-lawyers who have special knowledge or training about the problems of children with disabilities with them to consult. The family must be given access to their child's school records before the hearing. The family (or the school) may ask the Hearing Officer to order (subpoena) a person to attend the hearing as a witness.

Five business days before the hearing, the family and school must exchange a list of all documents and witnesses that they want to use at the hearing. The school and family must also give each other copies of any evaluation reports that will be shown to the Hearing Officer at the hearing. If you don't follow this rule, the Hearing Officer can stop you from using the documents or witnesses at the hearing.

**TIP:** If you want to ask questions of a school employee at the hearing, and they aren't on the school's witness list, ask the Hearing Officer to order that person to come to the hearing and testify.

### ***What happens at the hearing?***

The case will be decided by a Hearing Officer. The Hearing Officer is assigned by the state and may not be an employee of the school. A list of all Pennsylvania Hearing Officers is at <http://odr.pattan.net/files/odr/honames.pdf>. At the hearing, the family will have a chance to explain the child's situation to the Hearing Officer, to present witnesses and experts, and to question the school's witnesses. The parent will want to show why the school's current or proposed

evaluation, IEP, or placement of the child is not appropriate. You should also show why the evaluation, IEP, or placement that you want would be appropriate.

For example, you may want to show the Hearing Officer copies of your child's IEP and past report cards/progress reports to show that your child has not made much progress with that IEP. The parent may also want to use an outside "expert," like a therapist or psychologist, to discuss what's wrong with the current IEP and what improvements are needed. The school will then have a turn to show the Hearing Officer documents and to present witnesses. Each side gets to "cross-examine" (ask questions) of the other side's witnesses.

**TIP:** If you have had an independent evaluation of your child, you may want the expert who evaluated your child to come to the hearing. While the school *may* have to pay for the evaluation (see chapter entitled, *Getting Your Child an Independent Educational Evaluation*), the school will *not* have to pay for the expert to come to the hearing. If you can't afford to pay the expert to come to the hearing, you can still bring the expert's report and show it to the Hearing Officer.

### ***How long does it take to finish the hearing and get a decision?***

Once the timeline for scheduling the hearing begins, the Hearing Officer must make a written decision based on the hearing within 45 calendar days. If there are a lot of witnesses, it can sometimes take a couple of days to finish a hearing. The Hearing Officer can extend (or refuse to extend) the 45 day rule if you or the school ask him to. Once the Hearing Officer makes his decision, the school must either appeal or follow the decision. If the school does not appeal and doesn't follow the decision, then you can enforce the decision by filing a DOC complaint or by going to court.

**TIP:** If you settle the dispute with the school before the hearing, you can ask the Hearing Officer to put the settlement "on the record." But neither the Hearing Officer nor DOC will enforce settlements. The only way to enforce a settlement is by going to court. You will also lose your chance to have the school pay for your lawyer's fees by settling, unless the school agrees to pay the fees as part of the settlement.

### ***Can the Hearing Officer's decision be appealed?***

The Hearing Officer's decision can be appealed by the parents or the school (or both!) to a Special Education Appeals Panel. You can "appeal" by writing a letter to ODR (see address above). In your letter you must list your problems (called "exceptions") with the Hearing Officer's decision. That letter, and any brief that you choose to file with the letter, must be received by ODR within 15 calendar days of the date you or your lawyer got the Hearing Officer's decision. *Remember: this means ODR must get your letter in 15 days, it does not mean you have 15 days to postmark the letter.*

The Appeals Panel will read the exceptions and reach its decision within 30 calendar days. If either the school or the parent is still not happy, they can file a case in state or federal court within 90 calendar days of receiving the appeals panel decision.

### ***Who pays for the family's attorney?***

Remember, you do not have to hire an attorney; you can go to the hearing by yourself. While it may seem scary to go to a hearing without a lawyer, ask yourself what you have to lose. You might win some of what you want (or even all of what you want!). Even if you lose, you will know that you've given it your best shot.

If you do hire an attorney and you win the case, the school may be forced to pay some or all of your attorney's hearing costs. Schools do not have to pay for your lawyer to go to an IEP meeting, unless the meeting is held as a result of the hearing.

## A REVIEW OF KEY TIMELINES

Some of the deadlines described in this booklet are in calendar days, others are in schools days (that is, days in which the schools are open), and a few are in business days (Monday through Friday except for holidays). If your public charter school, early intervention agency, or school district is not following these timelines, contact the Special Education Director or other official and discuss the problem. If your child has missed services because of the delay, you should ask your school or early intervention provider to give your child "compensatory education" to make up for services that she missed.

If that doesn't work, you can file a complaint with the Bureau of Special Education, the Division of Compliance, Monitoring, and Planning, 333 Market Street, Harrisburg, PA 17126-0333, or you can contact the Special Education ConsultLine at 1-800-879-2301. (See Appendix for a copy of the Division of Compliance's (DOC) complaint form. You can also request mediation or a Special Education Hearing. For a detailed explanation of these options, see chapter entitled, *How To Resolve Special Education Disputes*.

### THE PRE-SCHOOL SYSTEM (for children ages 3 to 5)

#### Evaluations

A first or "initial evaluation" of a child must be completed, and a written report given to the parent, within 60 calendar days of the date the parent signed the "Permission to Evaluate" form. Re-evaluations must be completed, and a written report given to the parent, within 60 calendar days of the early intervention agency receiving the parent's written request for a re-evaluation. Even if the parent does not request a re-evaluation, the early intervention agency must re-evaluate the child at least once every two years.

## **Individualized Education Programs (IEPs)**

A meeting to develop the child's program (IEP) must be held within 30 calendar days of the first evaluation report. A child must begin receiving her IEP services within 14 calendar days of the parent's approval of the IEP. Children in the preschool system must have their IEPs reviewed by an IEP Team at least once a year. If the services listed in the IEP are changed at an IEP meeting, the child must begin receiving the new services no later than 14 calendar days after the new IEP is completed.

## **SPECIAL EDUCATION FOR SCHOOL-AGE CHILDREN**

### **Evaluations**

For initial evaluations, a student must be evaluated, and a written report given to the parent, within 60 school days of the parent's giving the school the "Permission to Evaluate" form signed by the parent (if the student attends a public charter school, the deadline is 60 calendar days). The school district must give the family the evaluation report at least 10 school days before the IEP Team meeting, although the parent can agree in writing to combine the evaluation report meeting with the IEP Team meeting. Children receiving special education services must be re-evaluated every three years unless the parent and the school agree that the re-evaluation should not be conducted. Students with mental retardation must be re-evaluated every two years (this cannot be waived). A parent can also request a re-evaluation of their child at any time, but the school does not have to agree to complete more than one re-evaluation each year.

## **Individualized Education Programs (IEPs)**

The school must meet with the parent to develop the student's program

(IEP) within 30 calendar days of the initial evaluation report. (There is no specific timeline for holding an IEP meeting after a re-evaluation.) The child must start receiving the services in the IEP no later than 10 school days after the parent has approved the IEP by signing the Notice of Recommended Educational Placement (NOREP). A child's IEP must be reviewed at least yearly. If the IEP is revised, the new services must begin no later than 10 school days after the parent has approved the changed IEP.

## TIMELINES FOR DISPUTE RESOLUTION

If a problem arises, the parent should always talk with the agency or school staff and, whenever possible, have a formal IEP meeting to discuss the problem. However, if the parent is still unhappy, here are some of the options and timelines for resolving disputes.

***The Pre-Hearing Conference:*** A parent can ask her school district to hold a pre-hearing conference (PHC) whenever she believes that the school is not meeting her child's special needs - for example, if she thinks her child's evaluation was inadequate or the IEP will not allow her child to make reasonable progress. PHCs do not exist for charter schools.

The school does not have to agree to a parent's request for a PHC, but if it does agree it must hold the PHC within 10 calendar days of receiving the parent's request. If an agreement is reached at the PHC that includes changing a child's IEP services or placement, the school must make the change(s) within 10 school days. The parent has 5 calendar days to change her mind and cancel any agreement reached at the PHC (but the school cannot change its mind).

***Mediation:*** A parent can also request that the school agree to mediation. If both parties agree, the state Office of Dispute Resolution (ODR) will contact the parent within 10 calendar days of receiving the mediation request. ODR will then set a date, time, and place, for the mediation session. If the parent requests

mediation, but does not request a Special Education Hearing at the same time, the timelines for convening the hearing (30 calendar days) will **not** begin to run. If the parent requests a mediation session and a hearing at the same time, the time period for the hearing will begin to run while the mediation takes place (unless the parties agree to a time extension).

**Special Education Hearing:** A parent can request a Special Education Hearing to resolve her dispute with the school or early intervention agency. The parent must request a hearing within two years of the date the parent either knew or should have known about the problems listed in her complaint. The two-year limit does not apply if the parent was prevented from requesting a hearing because the school specifically misrepresented that the problem was solved or if the school did not give the parent information about the problem that it was required to give under the law.

To request a hearing, the parent must send a "complaint" letter to the school and to the Office of Dispute Resolution. The law requires that certain information be included in the "complaint" letter. The school has 15 calendar days to argue to the Hearing Officer that the parent's Complaint is "insufficient" and does not have the required information. If a "sufficiency" challenge to the complaint is made, the Hearing Officer has 5 calendar days to decide whether the complaint is sufficient, and must immediately notify the parties in writing of his decision. If the Hearing Officer rules that a complaint is "insufficient," no hearing will be held (the parent will have to amend her complaint or start over).

If the school has not already given the parent written notice (called a Notice of Recommended Educational Placement or NOREP) about the issues in the parent's complaint, then it must send the parent a NOREP or written response addressing these issues within 10 calendar days of receiving the complaint.

Within 15 calendar days of its receiving the complaint, the school must schedule a "resolution session." A resolution session is a meeting between the parents and key school staff, including someone who has decision-making authority. Any agreement reached at this meeting must be put in writing and can be enforced

in a court of law, but the agreement can be cancelled by either side within 3 business days. The only ways to avoid having the resolution session are if the parents and school agree to go to mediation or if the parents and the school agree in writing to skip the resolution session.

If the parent has participated in the resolution session, and the school and the parent have not resolved the problem 30 calendar days after the school got the parent's "complaint" letter, the hearing can be scheduled. If the school has not scheduled or participated in the resolution session, the parent can ask the Hearing Officer to schedule the hearing.

The hearing must be completed and a decision must be issued within 45 calendar days (unless the Hearing Officer grants an extension at the request of a party). The parent and school must exchange information about the witnesses and documents they will use at the hearing at least 5 business days before the hearing begins.

**Appeals of Hearing Officers' Decisions:** The Hearing Officer's decision can be appealed by the parents or the school (or both!) to a Special Education Appeals Panel. Either side can "appeal" by writing a letter to ODR that lists their problems (called "exceptions") with the Hearing Officer's decision. That letter, and any brief that you choose to file with your letter, must be received by ODR within 15 calendar days of the date you or your lawyer gets the Hearing Officer's decision. Remember: this means ODR must get your letter in 15 days, it does not mean you have 15 days to postmark the appeal letter.

**Complaints to the Division of Monitoring, Compliance and Planning:** The State Department of Education, Division of Monitoring, Compliance and Planning (DOC) has 60 calendar days to investigate and resolve a written complaint from the parent who believes their child's rights under the special education laws have been violated. For example, a parent can file a DOC complaint against the school for not following the timelines set out in this chapter. The DOC complaint must be filed

within one year of the violation. If DOC finds that your child's right to an appropriate education has been violated, it can order compensatory education (make-up services for what your child has missed).

## SAMPLE LETTER REQUESTING AN EVALUATION

Your Address

Your Phone Number

Date

Principal's Name

Name of Your Child's School

School Address

Dear Principal:

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_.

My child has not been doing well in school and I am therefore requesting a comprehensive multidisciplinary evaluation to determine whether my child needs special education services, and, if so, what services are needed.

I would like to participate with the rest of the IEP Team in the review to determine what data and testing are needed. I'd also like to know when the testing (if any) will be held, and whether any meetings will be scheduled so that I can attend.

I understand that the evaluation must be completed, and a written report given to me, within 60 school days of my consent to the evaluation (note: 60 calendar days for students in public charter schools). Please send me, as soon as possible, a permission to evaluate form to sign so that we can begin the process. [Or, I'd like to come to the school and sign the form immediately].

Should you have any questions or problems with this request, please contact me.

Thank you.

Sincerely,  
Your Name

**KEEP A COPY OF THIS LETTER FOR YOUR FILE. WE RECOMMEND THAT YOU HAND-DELIVER THIS REQUEST TO THE PRINCIPAL, OR THAT YOU SEND IT CERTIFIED MAIL, RETURN RECEIPT REQUESTED.**

# SAMPLE LETTER REQUESTING A RE-EVALUATION

Your Address

Your Phone Number

Date

Principal's Name

Name of Your Child's School

School Address

Dear Principal:

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_.

I feel that my child is not making progress in her special education program. I am particularly concerned about the area(s) of \_\_\_\_\_. In order to better understand the problem and the type and amount of services that may be needed, I am requesting that my child be re-evaluated.

I would like to participate with the rest of the IEP Team in the review to determine what data and testing is needed. I'd also like to know when the testing will be held and whether any meetings will be scheduled so that I can attend.

I understand that the re-evaluation must be completed, and the written Reevaluation Report given to me, within 60 school days of your receipt of the Permission to Reevaluate form signed by me. Please send me as soon as possible a Permission to Reevaluate form to sign so that we can begin the process. [Or, I'd like to come to the school and sign the form immediately].

Thank you.

Sincerely,

Your Name

**KEEP A COPY OF THIS LETTER FOR YOUR RECORDS. WE RECOMMEND THAT YOU HAND-DELIVER THIS LETTER TO THE PRINCIPAL OR THAT YOU SEND THE REQUEST CERTIFIED MAIL, RETURN RECEIPT REQUESTED.**

*Remember that your school district must re-evaluate your child every three years (unless you agree otherwise), when the school thinks a re-evaluation is needed, or when a parent or teacher requests a re-evaluation. If your child has mental retardation or is a preschooler, she should be re-evaluated every two years. You can request additional re-evaluations, but the school district is only required to conduct a maximum of one re-evaluation each year.*

# SAMPLE LETTER REQUESTING AN INDEPENDENT EVALUATION

Your Address  
Your Phone Number

Date:

Principal  
Your Child's School  
Address of your child's school

Dear Principal:

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_.

I am requesting that the school district agree to pay for an independent evaluation of my child for the following reasons. [Although not required, we recommend that you tell the district why you do not think that the district's evaluation is not appropriate.]

The type of independent evaluation that is needed is:  
\_\_\_\_\_. [You can, but don't have to, tell the school district what type of educational evaluation you think is needed].

Please forward to me the criteria that the school district uses to select its evaluators for this type of evaluation. I would also appreciate a list of the evaluators that are available (although I understand that I do not have to select someone from the list to evaluate my child so long as the evaluator I select meet's the school district's criteria).

I would appreciate it if you would contact me at your earliest convenience to let me know whether the school district will pay for this independent evaluation. I understand that if the school district turns down my request, it must immediately arrange for a Special Education Hearing. If you choose to pursue a Hearing, please notify me when the school district will file a complaint with the Office of Dispute Resolution requesting that a Hearing be scheduled, and when the resolution session will be convened.

*[Note: A parent can also request that the public charter school or school district participate in a mediation session to resolve the dispute; if you mediate the dispute, and it doesn't work out, you can still have a Hearing, and you don't have to also have a resolution session].*

Thank you.

Sincerely,

Your Name

cc: Superintendent

**KEEP A COPY OF THIS REQUEST FOR YOUR FILE. WE RECOMMEND THAT YOU EITHER HAND-DELIVER THIS REQUEST TO YOUR PRINCIPAL OR SEND IT CERTIFIED MAIL, RETURN RECEIPT REQUESTED.**

# SAMPLE LETTER REQUESTING A SPECIAL EDUCATION DUE PROCESS HEARING

Your Address  
Your Phone Number

Date

Principal  
Your Child's School  
School Address

Dear Principal:

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_. My child is a student in the \_\_\_\_\_ grade.

I hereby request a Special Education Due Process Hearing because of my concerns about my child's Individualized Education Program (or evaluation, placement, or other issue). In order to complete my request, I am providing the following information:

1. **My child and I live at** [if your child lives at a different address, include the student's address also; if you are homeless, provide any contact information that is available].

\_\_\_\_\_  
\_\_\_\_\_

2. **My reasons for disapproving the school district's recommendation are** [List all of the problems that you would like the Hearing Officer to resolve. Remember, it is hard to add problems later, so make sure you include all of your concerns. Be sure to include all facts that explain the problems - see example below.]:

\_\_\_\_\_

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*(For example: I am rejecting the offered IEP for my daughter because it proposes a separate special education classroom. I believe that my daughter can succeed educationally if she is placed in a regular classroom with supports. My daughter had a successful experience in a regular preschool. She needs to learn to speak and behave like other children of her age, and attending class with children who do not have disabilities will help. My daughter also needs speech therapy, and the school district won't agree to provide it, etc.)*

3. **My proposed solution(s) to the problem(s) are** [If you have a proposed solution list it here, or say that you don't know how to fix the current problem. If you are asking for reimbursement or compensatory education to make up for past problems, in general you can go back two (2) years from your Hearing request.]

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*(For example: I think my daughter would do well in a regular first grade class if she had an aide to help with recess, and a special education teacher to help her with math and to help her teacher change the curriculum to take account of her learning needs and levels. My daughter also needs two hours per week of speech therapy. I am also asking for extra speech therapy to make up for what my daughter has already missed.)*

I am requesting that the Hearing be Open/Closed and held during the Day/Evening.

I would appreciate receiving copies of all my child's records as soon as possible, but in any case prior to the Hearing.

Thank you.

Sincerely

Your Name

cc: Office for Dispute Resolution,  
6340 Flank Drive, Suite 600  
Harrisburg, PA 17112-2764

School Superintendent

### IMPORTANT NOTE:

BEFORE MAKING A REQUEST FOR A SPECIAL EDUCATION DUE PROCESS HEARING, PLEASE REVIEW THE SECTION OF THIS BOOKLET CALLED RESOLVING SPECIAL EDUCATION DISPUTES. THAT SECTION EXPLAINS YOUR OPTIONS WHEN YOU DISAGREE WITH THE DECISION OF A SCHOOL DISTRICT OR A PUBLIC CHARTER SCHOOL. YOU CAN USE THIS LETTER TO ASK FOR A SPECIAL EDUCATION HEARING AT ANY TIME. OFTEN A FAMILY MAKES A REQUEST FOR A HEARING BY DISAPPROVING A SCHOOL OR SCHOOL DISTRICT PROPOSAL ON A NOTICE OF RECOMMENDED EDUCATIONAL PLACEMENT (NOREP) AND CHECKING THE BOX FOR A SPECIAL EDUCATION DUE PROCESS HEARING. IF YOU REQUEST A HEARING ON THE NOREP, OR FILL OUT THE HEARING REQUEST FORM ON THE OFFICE FOR DISPUTE RESOLUTION WEBSITE, YOU MAY NOT HAVE PROVIDED ALL OF THE INFORMATION REQUIRED FOR A HEARING REQUEST. THEREFORE, WE RECOMMEND THAT YOU ALSO SEND THE SCHOOL DISTRICT THIS LETTER. MAKE SURE THAT YOU SEND A COPY OF THE COMPLETED LETTER TO THE OFFICE OF DISPUTE RESOLUTION. KEEP A COPY FOR YOUR RECORDS.

## Complaint Form

Please feel free to make copies of this form, use additional paper, or call the ConsultLine at 1-800-879-2301 or the Bureau of Special Education (BSE) at 717-783-6913 for additional copies.

My preferred method of contact by the Adviser assigned to this complaint would be:

- By phone (Number) \_\_\_\_\_  
Best time during normal business hours to call \_\_\_\_\_.
- In person at a public facility during normal business hours. The location would probably be a school or Intermediate Unit building to permit duplication of documents.

Are you filing this complaint on behalf of a specific child? Yes \_\_\_\_\_ No \_\_\_\_\_

Please provide your contact information, relationship to child, and signature.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

*Home*

*Work*

*Cell*

Relationship to child or children:

Parent

Attorney

Advocate

Other

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**\*NOTE: THIS MUST BE SIGNED FOR BSE TO INVESTIGATE.**

The name and address of the residence of the child, school, and school district.

Child's Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

Is the child currently in school? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, where is the child's current program?

School/School District: \_\_\_\_\_

Complete only if the complaint is filed on behalf of a homeless child or youth.

\_\_\_\_\_

**Contact Person**

\_\_\_\_\_

Telephone Number

Did the violation occur within the past year? If so, on or about what date?

\_\_\_\_\_

Date

To clarify my allegations, I would like the Adviser to interview the following person(s).

Name	Occupation/Title	Phone Number/E-Mail Address

Please provide a statement about the violation or issue, which you believe has occurred. Please include a description about the nature of the problem.

Please list the facts that support your statement.

To the best of your knowledge, please suggest a solution to this problem.

You must send a copy of this complaint to the LEA. By signing below, you indicate to BSE that you have provided a copy of the complaint to the LEA.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**Please return form to: PDE/BSE, Division of Compliance Monitoring and Planning, 333 Market Street, 7<sup>th</sup> Floor, Harrisburg, PA 17126-0333**

**ConsultLine - CRP**

Initials

\_\_\_\_\_  
Date

## **ADVOCACY AND SUPPORT GROUPS**

### **ABOARD (Advisory Board on Autism & Related Disorders)**

800-827-9385

[www.aboard.org](http://www.aboard.org)

### **THE ARC OF PA**

800-692-7258

717-234-2621

[www.thearcpa.org](http://www.thearcpa.org)

### **AUTISM SOCIETY OF AMERICA-PA CHAPTER**

610-358-5256 (Phila. & Suburbs)

412-856-7223 (Pittsburgh)

[www.asaphilly.org](http://www.asaphilly.org)

### **CHILDREN WITH ATTENTION DEFICIT DISORDERS (CHADD)**

800-233-4050

301-306-7070 (National Office)

[www.chadd.org](http://www.chadd.org)

### **CONNECT EARLY INTERVENTION**

800-692-7288

### **DISABILITY RIGHTS NETWORK OF PENNSYLVANIA**

800-692-7443

717-236-8110

[www.drnpa.org](http://www.drnpa.org)

**EASTER SEAL SOCIETY**

717-741-3891

[www.visiteasterseals.org](http://www.visiteasterseals.org)

**EPILEPSY FOUNDATION**

800-887-7165

[www.efsepa.org](http://www.efsepa.org)

**LEARNING DISABILITIES ASSOC. OF PA**

412-334-0224

[www.lidaamerica.org](http://www.lidaamerica.org)

**YOUR LOCAL TASK FORCE**

There is a Task Force in each Intermediate Unit in the State. For information on the Task Force in your area, call the State Task Force Office at 800-360-7282

**MENTAL HEALTH ASSOC. OF SOUTHEAST PA**

215-751-1800 (SE PA)

[www.mhasp.org](http://www.mhasp.org)

**MENTAL HEALTH ASSOC. - ALLEGHENY COUNTY**

412-391-3820

[www.mhaac.net](http://www.mhaac.net)

**MENTOR PARENT PROGRAM**

888-447-1431 (NW and Rural PA)

[www.MentorParent.org](http://www.MentorParent.org)

**MUSCULAR DYSTROPHY ASSOC.**

800-572-1717

[www.mdausa.org](http://www.mdausa.org)

**PARENT EDUCATION AND ADVOCACY LEADERSHIP (PEAL) CENTER**  
866-950-1040  
[www.pealcenter.org](http://www.pealcenter.org)

**PARENT EDUCATION NETWORK**  
800-522-5827  
717-600-0100  
[www.parentednet.org](http://www.parentednet.org)

**PARENT INVOLVED NETWORK (PIN)**  
800-688-4226

**PENNSYLVANIA INITIATIVE ON ASSISTIVE TECHNOLOGY (PIAT)**  
215-204-1356  
[www.temple.edu/instituteondisabilities](http://www.temple.edu/instituteondisabilities)

**PENNSYLVANIA PARENT AND CAREGIVER RESOURCE NETWORK**  
888-5-PARENT (572-7368)  
[www.ppcrn.org](http://www.ppcrn.org)

**PENNSYLVANIA'S EDUCATION FOR ALL COALITION (PEAC)**  
[www.paedforall.org/](http://www.paedforall.org/)

**TOURETTE SYNDROME SOCIETY**  
800-990-3300  
717-337-1134  
[www.patourettesyndrome.org](http://www.patourettesyndrome.org)  
[www.patsainc.org](http://www.patsainc.org)

**UNITED CEREBRAL PALSY**  
215-242-4200 (Phila.)  
717-761-6129  
[www.ucpphila.org](http://www.ucpphila.org)

## USEFUL WEBSITES

**ADHDNews:** <http://www.adhdnews.com/>

Excellent website for information and resources about ADHD. Site has e-mail discussion group for parents of children with ADHD.

**Council for Exceptional Children (CEC):** <http://www.cec.sped.org/>

The CEC is dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities, and/or the gifted. The website provides information about the educational rights of children with disabilities, and it offers an on-line discussion forum for CEC members.

**The Council of Parent Attorneys and Advocates (COPAA):**

<http://www.copaa.net/>

COPAA is an independent, nonprofit, tax-exempt organization of attorneys, advocates, and parents established to improve the quality and quantity of legal assistance for parents of children with disabilities. COPAA's site includes links to other websites of interest, including a link to EDLAW, which maintains a list of attorneys who represent parents throughout the United States. EDLAW's address is: <http://www.edlaw.net/service/attorneys.html>

**IDEA Practices:** <http://www.ideapractices.org/>

This site is maintained by four projects funded by the U.S. Department of Education's Office of Special Education and Rehabilitative Services and it provides a wealth of information about special education law and practice. Contains links to disability-specific sites.

**LD OnLine: Learning Disabilities Information & Resources:**

<http://www.ldonline.org/>

Excellent site for basic and in-depth information about a wide range of learning disabilities. Offers a free electronic newsletter to provide updates about issues involving children with learning disabilities.

**Office of Special Education and Rehabilitative Services (OSERS):**

<http://www.ed.gov/offices/OSERS/>

OSERS, an office in the U.S. Department of Education, supports programs that assist in educating children with special needs, provides for the rehabilitation of youth and adults with disabilities, and supports research to improve the lives of individuals with disabilities. OSERS' website includes a link to a document entitled "A Guide to the Individualized Education Program" that can be downloaded off the Internet.

**Online Asperger Syndrome Information and Support (O.A.S.I.S.):**

<http://www.udel.edu/bkirby/asperger/>

Provides lots of information about Asperger Syndrome, links to other PDD/Autism web sites, and information about support groups for parents of children with Asperger Syndrome.

**Pennsylvania Department of Education (PDE):** <http://www.pde.state.pa.us>

Contains links to all of PDE's Basic Education Circulars (policy statements), Intermediate Unit web pages, and school district web pages.

**Pennsylvania Training and Technical Assistance Network (PaTTAN):**

<http://www.pattan.k12.pa.us/>

PaTTAN offers assistance to school personnel in the area of Effective Behavior Support and other areas. Types of support available include information, training and technical assistance on conducting Functional Behavioral Assessments, designing positive behavior support plans, and systems level interventions. PaTTAN has posted many publications and links on its website.

You can also access the PA annotated forms used by school districts and charter schools, such as the IEP, NOREP, and Procedural Safeguards Notice.

**University of Kentucky Behavior Home Page:**

<http://www.state.ky.us/agencies/behave/homepage.html>

Provides useful information about working with children with mental health needs.

**Wright's Special Education Law:** <http://wrightslaw.com/>

Excellent site operated by an attorney who represents parents in special education matters. Provides updates of recent court decisions from around the country, along with basic information about special education law.