

## WHAT CAN A PARENT DO IF A CHILD HAS A HEALTH PROBLEM THAT REQUIRES SUPPORT OR SERVICES IN SCHOOL?

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### WHEN IS MY CHILD ENTITLED TO SPECIAL HELP?

If your child has a health problem, chronic condition, physical, mental, or behavioral impairment that “substantially limits” a “major life activity” and needs help to participate in or benefit from education or extra-curricular programs, your child may qualify for accommodations in school.

### WHY IS THIS IMPORTANT?

The goal is to make sure every student with a disability can fully participate in school. Accommodations help students with disabilities succeed at school and create a level playing field for your child.

### WHAT IS A “MAJOR LIFE ACTIVITY”?

A “major life activity” includes learning, walking, seeing, hearing, speaking, concentrating, breathing, caring for oneself, learning, lifting, performing manual tasks, eating, sleeping, standing, bending, reading, concentrating, thinking, toileting, and communication. A child can also qualify because of problems with “major bodily functions” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

### WHAT ARE SOME EXAMPLES OF CONDITIONS THAT ARE COVERED?

- Asthma
- Auditory/ visual processing delays
- Severe Allergies
- Anxiety
- ADD and ADHD
- Cancer
- Crohns
- HIV/AIDS
- Diabetes
- Depression
- Dyslexia
- Oppositional Defiance Disorder
- Physical Disabilities
- Medically fragile
- Ulcerative Colitis
- Epilepsy

### WHAT CAN I DO IF I THINK MY CHILD NEEDS ACCOMMODATIONS IN SCHOOL?

Ask that your child be evaluated for a “504 Plan” also known as a “Service Agreement” or “Accommodations Plan.” This is an agreement between a parent and the school describing what accommodations will be provided to your child so that your child can participate in and benefit from

school activities. Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law which makes it illegal for public schools and some private schools to discriminate against people with disabilities. Public schools must provide a free and appropriate public education (FAPE) to all students.

In your letter, explain the disability your child has and the type of help you believe your child needs. You can include copies of evaluations, records, or prescriptions. The school district must evaluate your child (or accept the private evaluations) and determine whether your child qualifies for a Section 504 Plan.

### WHAT DOES A 504 PLAN INCLUDE?

A Section 504 Plan lists the services and accommodations your child needs. Some examples of typical accommodations are: permitting a child with a seizure disorder to stay indoors during recess when it is hot outside; dispensing medication for a student with asthma; having a child with a vision impairment sit close to the blackboard; allowing a child with diabetes to go to the school nurse to get an insulin shot.

### DOES MY CHILD NEED “SPECIAL EDUCATION SERVICES”?

Not necessarily. Children with chronic health impairments or serious illnesses *sometimes* need special education because they are “other health impaired” but only if your child requires specially designed instruction or needs to be instructed differently. If your child qualifies for special education, a school district must provide special education services, including therapies and other related services and your child must be educated in the “least restrictive environment” with their non-disabled peers.

A child is “other health impaired” if she has a serious or continuing health problem that limits her strength or alertness in school, or raises her sensitivity to the school environment – and this affects her ability to learn to the extent of requiring different instruction. Examples of health problems that may qualify your child for special education if they affect her ability to learn are: attention deficit disorder (“ADD”), attention deficit hyperactivity disorder (“ADHD”), Tourette Syndrome, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia.

If you think your child is eligible for special education, you can ask that the school evaluate your child. If the school agrees that your child is eligible for special education, you and the district will develop an Individualized Education Program (IEP) that lists the special education and other services your child needs. For more information on the special education process, see ELC’s manual *The Right to Special Education in Pennsylvania: A Guide for Parents and Advocates* and other publications that can be obtained from ELC’s website ([www.elc-pa.org](http://www.elc-pa.org)).

### WHAT SHOULD I DO IF MY CHILD’S DISABILITY AFFECTS ATTENDANCE?

Sometimes a child with a chronic health problem who is eligible for special education cannot attend school regularly, or misses school for long periods of time. Parents and the school district should determine how the student will receive her assignments and how much in-home teaching the student needs (the minimum is usually five hours, but if more instruction is appropriate for the child, the child should receive more). Those decisions should be included in the child’s IEP OR Section 504 Plan. Specially designed instruction can also be provided while your child is in the hospital if the child is not too ill to learn.

## DOES MY CHILD STILL QUALIFY FOR A 504 PLAN IF THE PROBLEM ONLY HAPPENS PERIODICALLY?

Yes. A child can be eligible even if the child's impairment only occurs periodically. A child even can be entitled to accommodations if her illness is in remission if it would substantially limit a major life activity if it were active. However, the child would qualify for protection under the law only if the problem is likely to last or has lasted for at least six (6) months.

Federal law also provides that a school district cannot consider steps that have been taken to help the child (for example, medication, a wheelchair or a hearing aid) in determining whether the child has a physical or mental impairment that substantially limits a major life activity. The one exception is if the child uses ordinary eyeglasses or contact lenses.

## WHAT IF THE SCHOOL DISTRICT AND I DON'T AGREE ABOUT WHETHER MY CHILD IS ELIGIBLE FOR AN IEP OR SECTION 504 PLAN, OR THE TYPE, AMOUNT, OR LOCATION SERVICES NEEDED?

If you disagree with your school district over the child's eligibility, or type, amount, or location of services provided in your child's IEP or Section 504 Plan, you can:

- Request mediation from the Office for Dispute Resolution (ODR). Call ODR 1-800-222-3353 or get a mediation request form at <http://odr.pattan.net>. The mediation system helps families with either special education issues or Section 504/Chapter 15 disputes.
- For children with Section 504 Plans (a/k/a Service Agreements), request an Informal Conference with district officials by sending a written request to the principal (and send a copy to the district's Director of Special Education). Within 10 school days of receiving your request, the district must hold the conference to try to resolve the disagreement.
- Request a formal hearing. For more information on mediation, the hearing system, and other options for resolving disputes, see ELC's Fact Sheet entitled *How to Resolve Special Education Disputes* at [www.elc-pa.org](http://www.elc-pa.org) or visit ODR's website at <http://odr.pattan.net>.

## CAN I GET HELP FROM MY CHILD FROM ANY OTHER SOURCE?

Medical Assistance or Medicaid ("MA") is the federal/state insurance program that pays for health screens and treatment services for low-income children and adults. In Pennsylvania, children with disabilities sufficiently severe to qualify for federal Social Security Income benefits are eligible for MA regardless of the amount of their families' income. They will be eligible unless they have too much income in their own name. Child support and Social Security benefits are not considered the child's income and so will not be counted against them. Many children with severe physical or behavioral disabilities in Pennsylvania qualify for MA coverage. Eligible children have the right to all "medically necessary" physical and behavioral health services. This includes routine medical care (such as immunizations or treatment for ordinary illness), but it can also include quite specialized and costly services.

Children who qualify for MA get an "ACCESS" card, which they can use to buy a wide range of prevention and treatment services. In most counties, these children are also enrolled in a Medical Assistance HMO. For many services and items, a child's physician will need to request authorization from the HMO based upon medical necessity. If families also have private health insurance, MA will require them to use their private insurance first. However, MA services must be free and promptly provided, and no co-pays or additional payments can be charged to families.

Some key behavioral health services covered by MA are: psychiatric hospital stays, residential treatment facilities, behavioral health rehabilitation services (the most common of which is Therapeutic Staff Support or "TSS," that is, staff who provide one-on-one support to children with serious behavioral problems), medication for behavioral problems (such as Ritalin for children with Attention Deficit Disorder), outpatient therapy, and partial hospitalization programs.

On the physical health side, MA pays for, among many other things: therapies, shift and intermittent skilled nursing, communication devices and other durable medical equipment, and personal care services for children who need assistance with basic activities of daily living (eating, dressing, hygiene, etc.). MA must provide eligible children with the medical services necessary to meet the child's physical and behavioral needs during the school day, and provide services in the child's home, community, or in the school setting.

Remember, even if MA pays for a service that your child receives during the school day, if that service is needed for her to learn or attend school safely (such as a nurse or TSS support), it is important that the service also be listed on her IEP.

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The Education Law Center-PA ("ELC") is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of vulnerable children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English language learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general idea of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact us for a referral or contact an attorney of your choice. Visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).