

A Basic Guide to Special Education

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Giving Every Child A Chance

A Basic Guide to Special Education

This guide is intended as a reference for people who have questions about special education for a child. It is not intended to offer advice or legal guidance. For an expanded, legally-grounded explanation of any aspect of the special education process, parents/caregivers should contact Advocates for Children of New Jersey's Kidlaw Resource Center. Staff attorneys can provide printed information and limited personal assistance to individual parents/caregivers. Spanish consultations are available.

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The **Kidlaw Resource Center** offers information, assistance, training and legal publications about the rights of children. The center provides free fact sheets, manuals and other information. Staff is available to provide presentations and training on children's legal rights to community groups and professionals. Visit www.kidlaw.org for more information.

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Table of Contents

Introduction	1
The ABCs of Special Education	2
Navigating the Special Education System	4
Special Education Screening and Evaluation	7
The Individualized Education Program	10
Special Education for Preschool Students Ages 3-5	13
Transition Services	14
Other Support Services	16
Challenging School Districts' Decisions	17
Other Important Special Education Rights	21
Non-Special Education Services	23
Intervention and Referral Services	26
Speech and Language Services	27
Glossary of Terms	28
Sample letters	30

Introduction

The topic of special education can be confusing and frightening for parents who suspect their child has a disability or has difficulty learning. Parents in this situation want to know how to get help for their child.

This guide is intended to help parents navigate the system and services available for children with special learning needs and to educate parents about their children's rights. It summarizes the basic procedures, services and rights of children who have special needs and represents current New Jersey laws and regulations.

For the purposes of this guide, the term "parent" is used to be consistent with the New Jersey State Department of Education's definition, which is:

“the natural or adoptive parent, the legal guardian, foster parent when willing to serve or a surrogate parent, a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student's welfare).”

Unless a parent's rights have been terminated by a court order, the parent retains all rights. An adult student also falls within the definition of parent. A government employee cannot be a surrogate parent.

The ABCs of Special Education

Federal and New Jersey law* requires that a free appropriate public education (FAPE) in the least restrictive environment (LRE) be available to all children with disabilities from age 3 through 21 or high school graduation, whichever comes first. There are special rules for eligible children aged 3-5, who are classified as Preschool Disabled. Those rules are discussed later in this guide

The process for providing special education services to a child with a disability begins with a written request for evaluations made to a school district's director of special education or special services. Parents who believe their child is having serious problems in school can make a written request for school evaluations at any time.

In addition, the school district has a legal responsibility to identify and evaluate children who may need special education services. Teachers, administrators, other school staff and state agencies who work with children can also make a written request for the initial school evaluations. However, these evaluations may only be performed if the parent provides written consent.

Individualized Education Program (IEP)

If the evaluation determines that a child needs special education services, a plan known as the Individualized Education Program (IEP) is then developed specially for that child.

Once a child turns 3, the New Jersey Department of Education is responsible for identifying and meeting the special education needs of the child. These services are delivered under the direction of the local school district. Services may continue until high school graduation or age 21, whichever occurs first.

***The Individuals with Disabilities Education Act (IDEA) 20 U.S.C. Section 1400 et.seq. and New Jersey Department of Education Administrative Code: N.J.A.C. 6A:14**

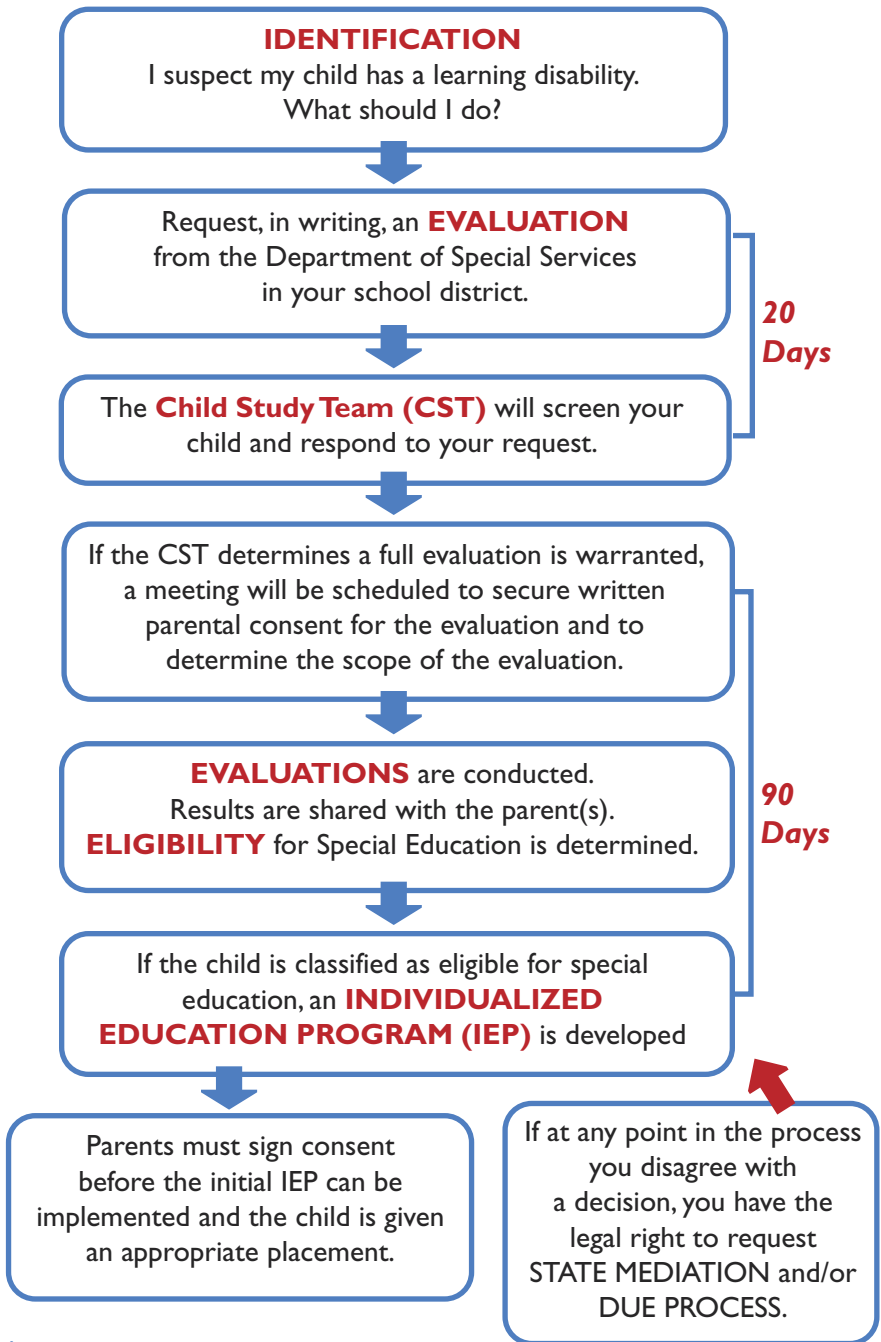
For children eligible for special education services, a Child Study Team (CST) is responsible for developing and overseeing the child’s education. In all districts, the Child Study Team consists of a school psychologist, a learning disabilities teacher-consultant, a school social worker and, in certain cases, a speech-language specialist. Additional specialists may be added as needed. In addition, each child has an Individualized Educational Program team, which is responsible for developing the plan in accordance with the child’s evaluations, observations and the parents’ input.

Parent Participation

Parents’ participation in a child’s education is critical for every child, especially for children with special education needs. That is why it is important for parents to attend all scheduled meetings about their child.

Parents should also be active members of the IEP team and should be involved with the development of their child’s program. In order for the child to receive services, parents must agree in writing to the first IEP developed for a child. Parents have the right to disagree with decisions made by the school district about their child’s individual program. These “procedural rights” include mediation and “due process hearings,” which are described later in this guide.

Navigating the Special Education System



What Every Parent and Advocate Should Know About Special Education Law

1. Every request a parent makes of the Child Study Team must be in writing to ensure the child's rights are protected.
2. A parent has the right to request an evaluation for his/her child if there is reason to believe that the child has special needs. This written request must be addressed to the director of special education in the school district in which the family is residing or the district where the child is attending school if the child is in foster care.
3. There can be **NO** "waiting list" for a parent requesting an evaluation.
4. The school district's special education office must respond to parents within 20 days of the receipt of a parent's written request. This means that an evaluation can be started at anytime — 12 months a year — and it can **NEVER** be "too late in the school year" to begin the process. There is no summer vacation for evaluations.
5. The parent must receive copies of the evaluation reports at least 10 days before a scheduled meeting between the parents and the child study team to determine the child's eligibility for special education. All reports and letters must be in a language the parent understands.
6. If the parent's request for an evaluation is denied, the parent has the right to request state mediation and/or a due process hearing.
7. The school can also request an evaluation and must have the parent's written consent to proceed. If the parent refuses, the school can seek state mediation and/or a due process hearing.
8. If a child is deemed eligible for special education services, the IEP team, in cooperation with parents, must develop an Individualized Education Program (IEP) for that child.
9. The child study team is comprised of a school psychologist, a learning disabilities teacher-consultant (LDTC) and a social worker. A speech-language specialist may also serve on the CST. Every school district has at least one CST.

10. A child found eligible for special education is assigned a case manager, who oversees the implementation of that child's IEP. Written requests should be made to the child's case manager with a copy to the director of special education.
11. The **PARENT MUST** be included in all decision-making, invited to all meetings and must be provided with all written evaluations and notices in their native language, unless clearly not possible. Parents also have the right to have an interpreter present during meetings.
12. The cost of services may not be used as a factor in the child study team's decisions. Parents may not be required to use their health insurance to pay for services as a result of the IEP, nor for evaluations determined to be needed.
13. After participating in the development of the **initial IEP**, the **parent must give written consent** before the program is implemented.
14. Parents should go to all IEP meetings and, if possible, bring another adult, such as a spouse, friend or advocate. Parents have the right to bring a tape recorder, as does the school.
15. The parent has the right to disagree with the findings of the evaluation, the classification, the IEP and/or the educational placement. A parent has 15 days to review and agree to the IEP. Parents cannot be required to sign off on the program at the meeting where the plan is first developed.
16. When there is disagreement, the parent has the right to request, in writing, an independent outside evaluation, at no cost to the family.
17. If the school district refuses to consent to the independent evaluation or there continues to be disagreement regarding what the IEP states, either party (parent or school) can ask for state mediation and/or a due process hearing. That request is sent directly to the New Jersey Office of Special Education in Trenton.
18. The IEP that is developed in each year that follows the initial IEP does not require the parent's written consent and the only way that a parent can reject a new IEP is to request state mediation or file a complaint for a due process hearing within 15 days of receiving the proposed IEP.
19. Parents do not have the final say when they disagree with the school district's decision. When disputes cannot be resolved, the parent's only option is to request mediation and/or a due process hearing.

Special Education Screening and Evaluation

Under state and federal law, children with disabilities in any of the following categories are entitled to receive special education services:

- ✧ Deafness/hearing impairment
- ✧ Autism
- ✧ Cognitively impaired/mental retardation
- ✧ Communication impaired/language disorder
- ✧ Emotionally disturbed/behavior disorder
- ✧ Multiply disabled (two or more equally disabling conditions)
- ✧ Orthopedically impaired, including malformation or malfunction of bones, muscle or tissue
- ✧ Other health impaired/chronically ill
- ✧ Preschool disabled (ages 3-5)
- ✧ Social maladjustment
- ✧ Specific learning disability
- ✧ Traumatic brain injury
- ✧ Visually impaired.

If parents believe their child has one of these disabilities and needs special education services, the parent must request an evaluation, **in writing**, addressed to the Director of Special Education in the school district in which the family is residing or, for foster children, the district in which the child is attending school.

A child is also eligible for special education if the child does not have a learning disability but has another disability, such as a behavioral, emotional or other health problem, that prevents the child from learning in a regular education setting.

Screening

The law requires that the school district take several steps in response to the parent's written request for evaluation:

- ★ Vision and audiometric (sight and hearing) screening of the student will be conducted by the school nurse.
- ★ The school nurse will summarize the child's available health information.
- ★ The child's teacher will be consulted about the child's academic progress and behavior.
- ★ An initial meeting will be held within 20 days of receiving the request to determine whether a formal evaluation is warranted. This meeting will include the parent(s), the child's classroom teacher and a Child Study Team (CST), which consists of a school psychologist, a learning disabilities teacher-consultant (LDTC), a school social worker and, in certain cases, a speech-language specialist. Additional specialists may be added as needed.

The Evaluation Process

Parents receive written notice of the conclusion reached during the first meeting. If it is determined that a formal evaluation will be conducted, written parental consent to perform every evaluation must be obtained. The director of special education will assign one of the CST members to act as case manager for the student. Then, a complete assessment of the child in all areas of the suspected disability will be undertaken. This assessment includes, but is not limited to, the following components:

- ★ At least two assessments by members of the Child Study Team
- ★ Other specialists (i.e. neurologist, audiologist, etc.) in the area of suspected disability
- ★ The use of appropriate standardized tests
- ★ A functional assessment of academic performance and/or behavior in which the appropriate member of the Child Study Team observes the child and describes the child's performance and/or behavior

- ✦ If it is suspected that a child has a behavioral or emotional problem, a psychiatrist should also evaluate the child.

The school district has 90 calendar days from the date of the parent's **written** consent to evaluate the student, determine whether the student is eligible for special education services and, if eligible, develop and implement an appropriate program and placement.

Parents must receive copies of all the evaluations in their native language **at least 10 days** before the classification meeting. If the parent disagrees with the evaluation, the parent has the right to request in writing an independent evaluation (an evaluation performed by professionals who are not employees of the school district) at the school district's expense.

At least one re-evaluation must occur every three years following the initial evaluation, unless the parent signs a written consent stating that a re-evaluation is unnecessary and the CST agrees. However, re-evaluations or new evaluations may be appropriate at other times if it appears that a child's Individualized Education Program needs to be changed because it is not meeting the child's needs.

The decision of whether a child needs special education services is made jointly among parents, teachers, the case manager and other members of the Child Study Team. These parties meet, review reports and determine if the student will be classified as "eligible for special education and related services." If all parties agree that the student is eligible, the IEP team develops a specialized education program, which must be implemented by the 90th day following parental written request for the evaluation.

The Individualized Education Program

Once a student has been evaluated and determined eligible for special education and related services, the next step is to develop an Individualized Education Program, or IEP. The IEP is the written agreement between the school district and parent(s). It identifies all programs and services that meet the student's special needs as determined through the evaluation process. The development of the IEP is a team effort. The IEP team must include:

- ✦ The parent(s)
- ✦ Student (if appropriate)
- ✦ Case manager
- ✦ One of the student's regular education teachers, if applicable, otherwise a regular education teacher knowledgeable about the school's program
- ✦ One special education teacher
- ✦ Specified school staff, including an administrator with supervisory authority
- ✦ Others, including experts invited by the parents or the school district, as needed

At least one member of this team must be able to explain why a particular program is being recommended. This is typically the case manager, but can be any member of the team.

The IEP is a written plan that identifies:

- ✦ Present levels of the student's performance
- ✦ Measurable annual goals and short-term objectives or benchmarks
- ✦ Teaching activities and other services specially designed for that student, with the intent of enabling that student to meet his/her goals and objectives.

The law requires that the following procedures be followed:

- ✦ Once the child is determined eligible for special education, the IEP team must meet to develop the Individualized Education Plan. (This can happen at the same meeting when eligibility is determined).
- ✦ The IEP must be implemented no later than 90 days following written parental consent for the initial evaluation.
- ✦ A copy of the written IEP must be provided to the parent(s).
- ✦ The IEP team must meet to review the IEP once a year. At that time, a new IEP, with any appropriate changes, must be implemented. However, the IEP team can meet at any time during the year if it is necessary to discuss problems or to change the IEP.
- ✦ Written parental consent is required before the school can implement the **initial** IEP. After the first IEP, the school district can change the IEP at the annual meeting without the parent's written consent. The only way that a parent can object or reject a new IEP is to request mediation or a due process hearing within 15 **calendar** days of receiving the proposed changed IEP.

In addition to the instructional program, the IEP will describe **related services** that will be provided to the student. These services, which are intended to help the student learn, may include, **but are not limited to:**

- ✦ Counseling
- ✦ Occupational therapy
- ✦ Physical therapy
- ✦ Speech-language services
- ✦ School nurse services
- ✦ Transportation
- ✦ Assistive technology
- ✦ Recreation
- ✦ Social work services

- ✦ Medical Services (for diagnosis only)
- ✦ Behavioral services to support a behavior plan in the IEP that specifically addresses a child's behaviors

In addition to related services, other programs can be included in the IEP, if needed. These may include an extended school year program when a student's learning disability is so severe that he/she needs additional instruction to make progress. When an interruption in education may cause the student's performance to decline and that loss cannot be made up in a reasonable time, an extended school year may be included in the IEP.

Once the program and service needs of the student are determined, an appropriate placement for the student in the least restrictive environment must be identified. For some students, the least restrictive setting is the general education classroom with supports and services as needed.

For students who need to be taught by a special education teacher at a slower pace in a small class for some or all subjects, a "resource center" is considered the least restrictive environment. A "self-contained classroom" is the least restrictive setting for students with more severe learning or behavior disabilities who need to be taught most or all of their subjects by a special education teacher with few classmates, more individual attention and support services. The most restrictive environment is home instruction, which should only occur on a temporary basis until an appropriate program is found.

Sometimes, a student will have to attend a program outside the school district. Out-of-district placements are appropriate when the school district cannot meet a student's needs with a program inside the district. The availability of existing school district programs **cannot** determine the services available to the student. The child's needs must be identified **first and then** placement decisions should be made to meet those needs.

Special Education for Preschool Students

Ages 3-5

Parents of children ages 3 through 5 who have **not** received Early Intervention Services but show signs of developmental delays and/or other disabilities, should request an evaluation by writing to the director of special education at their school district where they live.

The evaluation procedure and the requirements for an Individual Education Program are generally the same as for older children, except that all preschoolers are classified as “preschool disabled.” The law also requires that a speech-language specialist be part of the child study team when evaluating a child for preschool services.

Every school district must provide preschool programs for children with disabilities five days a week, one day of which may be used for parent training. At least four days must be devoted to student instruction for a minimum of 10 hours. The nature and severity of the child’s disability will determine the extent of the services needed to assure a free appropriate public education in the least restrictive environment.

If the IEP cannot be implemented in the local school district, an outside agency or other school district may be used to provide preschool instruction and related services, as long as certain conditions are met. An outside program must be nonsectarian (not affiliated with any religious organization), and the facility and its teachers must have the required licenses, certifications and state approvals.

The preschool child will be re-evaluated by June 30th of the year he/she is scheduled to enter kindergarten. If it is determined that the student continues to need services, the student shall be classified using the categories listed on page 7. This makes a child eligible for special education and related services when entering kindergarten.

Transition Services

Federal and state law requires that students in special education receive transition services. Case managers are responsible for helping these students plan for high school and life after graduation.

At age 14, or in 8th grade, whichever comes first, the student must begin to plan for high school and beyond. Ideally, planning should begin in the spring of 7th grade.

At this time, the student must be invited to the transition part of the IEP meeting. The student must also be evaluated to determine his or her interests, strengths and weaknesses to develop plans for high school and beyond.

At age 16, the student's needed transition services must be included in the IEP and implemented. The term "transition services" means a coordinated set of activities for a student with disabilities that promote movement from school to post-school activities, which may include college, adult vocational training, employment, continuing adult education and adult services, independent living and/or community services.

Transition services must be based on the student's needs, taking into account the student's individual preferences, strengths and interests. Services shall include:

- ✦ Instruction
- ✦ Related services
- ✦ Community experiences
- ✦ Post-school living and employment goals and, when appropriate, living skills and vocational evaluation.

The transition services plan should relate directly to the student's goals beyond high school and show how planned studies are linked to these goals. The case manager must also provide information about services delivered through other state agencies and, if needed, arrange for parents and/or students to talk to representatives of the relevant agencies.

Vocational Programs

Every county has one or more vocational high schools serving all the school districts in the county. This means that limited spots are available for students so applications should be made at the beginning of 8th grade. Most vocational schools also offer programs for adult students.

Applications are available in the guidance office of every middle school. It is the student's responsibility to complete the application and return it to the guidance office before the winter break of 8th grade. The guidance office forwards applications to the vocational school. Vocational schools notify students by February whether they have been accepted. Some counties have 2-year vocational programs that should be applied to in the beginning of 10th grade for possible acceptance in 11th grade.

There are separate vocational programs for students with disabilities. Most vocational schools have shared-time programs in which the student attends his/her local high school for half of the day and goes to the vocational school for the other half.

Preparation for College

Any student who is academically inclined should learn about and be prepared for the academic requirements to attend college. Anyone with a New Jersey high school diploma may attend the local community college. However, after being admitted, students have to take tests to see whether they are prepared to do college-level work or whether they need additional courses first.

Life Skills Programs

School districts must meet the requirements of every IEP, including those that call for life skills training, which can range from using public transportation to cooking. These programs may be available in the local high school or provided by community agencies in conjunction with the high school.

Turning 18

Unless a court has found that a student is incompetent, the student will be given the legal right to make his/her own educational decisions when the student turns 18. One year prior to the 18th birthday, the case manager must inform both the student and parents that the student will have this legal right.

Parents who believe their child has disabilities that make it impossible for the child to make important decisions may file a complaint seeking guardianship with the county surrogate's office. It can take several months to obtain guardianship. It is a good idea to start this process when the child turns 17. For more information about this process, contact the county's surrogate's office.

Other Support Services

Some youth continue to need services after they graduate from high school. Some may be eligible for non-education support services, even before they turn 18.

Two state agencies that provide services are: the New Jersey Department of Human Services, Division of Developmental Disabilities (DDD), and the state Department of Labor, Division of Vocational Rehabilitation Services (DVRS). Parents and/or students — not school districts — are responsible for registering for services from either of these agencies.

DDD provides non-educational services for people whose disabilities are permanent and were identified prior to the student's 22nd birthday. Parents may apply for direct services for their child as soon as a developmental disability is diagnosed. These services may include personal care, training, residential care and family services, such as after-school care, respite services, counseling, crisis intervention and home health care. Some services may be provided as soon as the child is registered with DDD and found eligible.

Many services have long waiting lists. Therefore, as soon as parents think their child may need these services, they should file an application with their regional office of the Division of Developmental Disabilities. The registration forms and phone number can be obtained from the school's Department of Special Services or by contacting the Division of Developmental Disabilities. (See **Helpful Contacts**, page 34).

Division of Vocational Rehabilitation Services

Individuals may be eligible for DVRS services, if the division concludes that a person has a physical or mental impairment that may prevent him/her from holding a paying job. Services may include vocational counseling, job-seeking skills, training, job placement and supported employment.

The registration may be filed before a student's 18th birthday to ensure that services will be available when needed. The application forms and contact phone number can be obtained from the school's Department of Special Services or by contacting DVR. (See **Helpful Contact**, page 34).

Challenging School Districts' Decisions

Any time during a child's involvement with the special education system, parents have certain rights and responsibilities. There is also a clear process for parents to take if they believe their child is not receiving the appropriate services.

This section outlines those rights and responsibilities and the dispute resolution process, known as "procedural safeguards."

Written Notice

The school district must provide parents with written notice prior to any meeting about important parts of a child's education. Meetings must be scheduled at a mutually-agreeable date and time. Whenever the school district proposes changes to the

Individualized Education Program, the child's placement or to the evaluation, a school official must inform parents of proposed changes 15 days before making the changes.

Parents have 15 days to oppose the school district's plans. If the parents disagree, they must file for Due Process or Mediation during those 15 days. Otherwise, the school district can take the proposed action without parental consent. All notices and copies of evaluations given by the school district to the parent must be in the parent's native language, unless clearly not possible.

When school officials are suggesting changes, parents must be given written notice of the reasons, including a description of the options the school district considered and the reasons why some options were rejected. Included in the written notification must be a description of parental rights and procedures for exercising those rights, as well as the names of organizations that are able to assist parents in understanding and exercising their due process rights.

When parents want an IEP meeting or want to change the IEP, or if they disagree with an evaluation or a proposed IEP, the parents must provide the school district with **written** notices and/or **written** requests, which should always be addressed to the child's case manager and to the director of special services. **Telephone or face-to-face conversations are not considered to be an official notice or request.** School officials **MUST** respond to written parental requests, in writing, within 20 days of receipt of the request.

The Right to Mediation and/or Due Process

Federal and state laws protect a parent's right to disagree with the Child Study Team's actions or inactions and provides a way to exercise that right. These rights are called "procedural rights." Parents may exercise their rights to resolve disagreements that arise at **any stage** of the special education process. Parents may wish to obtain legal advice before requesting mediation or a due process hearing. (For parents who cannot afford an attorney, ACNJ or Legal Services may be able to provide assistance. See page 34 for contact information.)

Federal law requires an informal meeting between the parent(s) and someone authorized to make decisions for the school (often the director of special education) to attempt to resolve any conflict, informally, without lawyers. This is called a resolution meeting.

If an agreement cannot be reached, the parent(s) or the school district may request either mediation or an administrative due process hearing. (Both are described below).

The New Jersey Department of Education has forms to request each type of resolution. Copies of these forms are available from the local school district, the New Jersey State Department of Education or from Advocates for Children of New Jersey. **(See page 34 for contact information).**

Once state mediation is requested, no changes can be made to the student's classification, program or placement until the dispute is resolved. The same is true if a parent requests a due process hearing, unless both parties agree. This inability to change anything is commonly referred to as the "stay put" effect of seeking state intervention.

Mediation

A parent or school district may request mediation prior to filing for a due process hearing. Mediation is less formal than a due process hearing. Trained, impartial mediators from the New Jersey State Department of Education's Office of Special Education Programs (OSEP) conduct mediation.

The mediator cannot issue a decision. Rather, the mediator helps the parties define the issues and, if possible, come to an agreement. School districts or parents can refuse to participate in mediation. In this case, a parent or school district must file a request for a due process hearing.

If the parties reach an agreement through mediation, the mediator will write-up the agreement and both parties will sign it. Both parties must comply with this signed agreement. If mediation fails,

the mediator can request a due process hearing from the Office of Administrative Law, the court that decides special education disputes, unless the complaining party wishes to withdraw the dispute.

The Due Process Hearing

An administrative due process hearing is a formal, trial-like hearing before an administrative law judge. Both parties — parents and the school district — present evidence and legal arguments in support of their positions. After hearing the evidence and arguments, the judge makes a final decision that both parties must accept. While either party may appeal the decision in New Jersey Superior Court or the Federal District Court, the judge’s decision must be carried out without delay.

Either a parent or a school district can request a due process hearing when the party challenges the action or inaction of the other. A school district **MUST** request a due process hearing if a parent’s written request for an independent outside evaluation is denied.

A copy of the form letter to assist parents in requesting a due process hearing is available from the Department of Education, Office of Special Education, or ACNJ. (See **Helpful Contacts**, page 34). Once a request for a due process hearing is received by the Office of Special Education, it must acknowledge receipt of the request, provide the parent with information about free- and low-cost legal services and offer the parties mediation (described above) prior to the hearing.

Emergency Relief Hearing

If a parent has requested a due process hearing and his/her child is suffering serious harm while waiting for the hearing, the parent may request emergency relief. Emergency relief is only appropriate for the following types of “serious harm:”

1. When there is a break in the services that a child is supposed to be getting under the IEP, such as a child being excluded from a school bus, and this means the child cannot attend school.

2. When a child is suspended from school for an action that is related to his disability
3. When a student is not in school while waiting for a placement decision to be made through a due process hearing
4. When there is a dispute with the school district over whether a child will graduate or participate in graduation ceremonies.

An Administrative Law Judge may grant emergency relief if the judge decides that the evidence presented by the parent proves that:

1. The child will suffer **irreparable harm** if the request is not granted.
2. An undisputed legal right exists that directly relates to the reasons why the due process hearing was requested.
3. It is likely that the due process hearing will be decided in the parents' favor because the facts of the case legally support their claim.
4. When the interests of the parties are balanced, the facts of the case show that the child will suffer greater harm than the school district, if the requested relief is not granted.

A form letter to request emergency relief can be obtained from the New Jersey State Department of Education or ACNJ.

Other Important Special Education Rights

Students in special education have similar rights and responsibilities to regular education students in areas described below.

Equal participation to the extent possible

Students in special education have the right to a school year and day similar to those offered in regular education programs. Classrooms and materials should also be similar and, if able, these students should have access to all school facilities and be able to participate in school activities and non-academic classes.

Giving Every Child A Chance

Meet New Jersey's education standards

Students in special education have the right, to the extent appropriate, to be provided with instruction that meets the state's education standards, known as the Core Curriculum Content Standards. They also have the right to participate in statewide testing.

Earn a high school diploma

Students in special education have the right to earn a high school diploma by meeting state requirements or by meeting specially-developed IEP requirements.

Disciplinary action must consider disability

All students must abide by the school code of conduct, but students receiving special education services have the right to have their disability considered if they don't comply with school rules.

This also applies to students who may have been eligible for special education services but were not identified as such by the school district. In this case, parents have the right to a Child Study Team evaluation.

School discipline is a complex subject. For more information, contact ACNJ's education attorneys or visit www.kidlaw.org.

Other Non-Special Education Services

Early Intervention Services

Federal law mandates that Early Intervention Services be provided to families with children from birth to 3 years who have developmental delays and/or physical or mental disabilities that are likely to result in developmental delays.

Early Intervention Services are provided by the New Jersey Department of Health and Senior Services. These are not special education services, but may be necessary for the child's development and to address any disabilities early in the child's life.

Common developmental areas include, but are not limited to:

- ★ Communication
- ★ Feeding
- ★ Behavior
- ★ Walking/movement
- ★ Vision
- ★ Hearing
- ★ Autism Spectrum Disorders
- ★ Disorders, such as fetal alcohol syndrome, that result from exposure to toxic substances

The goal of early intervention is to provide services and support to families during the child's first years. Anyone (doctors, parents, child care workers, friends, etc.) can make the initial call or "referral" for services by calling 1-888-653-4463. The parent will be directed to the Regional System Point of Entry (SPOE) and will be assigned to a service coordinator within two business days.

When a child is referred, an evaluation and assessment must be conducted. If that evaluation finds that the child requires services, an initial meeting must be held and the first Individualized Family Service Plan (IFSP) must be developed. This must all be completed within 45 days of the referral.

Services may be provided prior to the completion of an evaluation and assessment if the New Jersey Early Intervention Services determines that the services are needed immediately and if parents agree in writing to have those services provided to their child.

Parents should be aware that they may have to pay a share of the cost of these services. Co-payments are based on the services provided and the family's income. The inability to pay cannot be used to delay or deny a child the required services. More information on fees is available on the Department of Health's website. (See **Helpful Contacts**, page 34).

The service coordinator's responsibilities include:

- ✦ Coordinating all evaluations and services
- ✦ Obtaining parent's written consent to evaluations
- ✦ Explaining the family's cost participation requirements, including helping families complete all necessary forms
- ✦ Providing families with necessary information about their child's needs
- ✦ Assisting families with identifying service providers
- ✦ Coordinating and monitoring the delivery of services
- ✦ Facilitating the transition to preschool.

There is no cost for the assessment and evaluation process. A multidisciplinary team of qualified professionals shall determine whether a child is eligible for services and, if so, what services are necessary. A finding that a child is eligible for services is based upon a review of the child's medical records, history and the child's current level of functioning.

A child who has been diagnosed with certain physical or mental conditions that are more likely to result in developmental delays (such as chromosomal abnormalities, autistic disorders, fetal alcohol syndrome, severe vision or hearing impairment) is eligible for services.

Early Intervention services can include:

- ✦ Family training and counseling

- ✦ Health/medical/nursing/social work/psychological service
- ✦ Hearing, vision and/or language services
- ✦ Nutrition
- ✦ Transportation
- ✦ Other services to help the child and family

Once it is determined that a family is eligible for intervention services, the written Individualized Family Service Plan is developed together by the service coordinator, the family and other qualified professionals to meet the unique needs of the family.

The IFSP will include:

- ✦ A statement of the child’s current functioning
- ✦ Identification of services to be provided, steps to be taken to obtain services and the projected date for initiation of services (which should be as soon as possible)
- ✦ The location where services will be provided, which should be in the child’s natural environment, such as the home or child care center, unless this is not possible
- ✦ Goals/outcomes to be achieved
- ✦ Payment arrangements, if any, according to the family cost share participation requirements

Parents must agree in writing to allow the identified services to be provided to their child. They may decide to receive some services and decline others. Parents may withdraw consent at any time.

For a smooth transition to preschool, the following should occur prior to a child’s 3rd birthday:

- ✦ The service coordinator should notify the school district 120 days before the child’s 3rd birthday that a child with special needs will be enrolling in school.
- ✦ The service coordinator should provide records and meet with the school district’s child study team together with the parent.
- ✦ Parents should write to their school district’s director of special

education to request a child study team evaluation at least 110 days before their child's 3rd birthday to avoid an interruption in services.

If a child is found eligible for special education, the services provided by the school district will be different than those provided in early intervention.

Intervention and Referral Services

Starting in kindergarten, school districts must offer intervention and referral services (IR&S) to children in regular education who are having learning, behavioral or health difficulties in school. These services and supports are for children who are not in special education, but still need help to succeed in school.

School professionals, such as a learning specialist, speech and language specialist, psychologist, an occupational or physical therapist, must identify children who need help. These professionals may advise or be part of an IR&S team that will develop a written plan for services. In some school districts, teachers make up the IR&S team and receive guidance from the Child Study Team. In other districts, members of the CST will be part of the IR&S team.

Parents are also part of this team and must be involved in the development of this plan. The purpose of this team is to provide guidance to teachers and parents and provide services to the child. It is not the Child Study Team.

The IR&S team must meet once a year to review and revise the plan as necessary. The IR&S team may meet more frequently if the plan needs to be revised. The parent must be invited to meetings. A parent has the right, at any time, to make a written request for a complete child study team evaluation for special education. **A school district cannot require that a child try IR&S services before receiving child study team evaluations.**

Speech and Language Services

If a child has a suspected speech or language disability, the child will be evaluated by a speech-language specialist. This specialist will be responsible for obtaining parental consent for the evaluation, meeting with the parent and the regular education teacher, obtaining a written statement from the regular education teacher about the impact of the disability on the child's educational performance, performing an evaluation and preparing a written report. (This service can also be provided to children in special education).

After the speech-language evaluation is performed, a meeting will be held to determine whether the child is eligible for speech-language services. This meeting will include the parent, a teacher, the student when appropriate, the speech-language specialist and others at the discretion of the parent and/or the school district.

At the eligibility meeting, the results of the evaluation will be compared to the specific criteria for speech disorders and/or communication impairment to determine whether the child is eligible for speech-language services. If it is suspected that a child is "communication disabled," meaning they have problems understanding the spoken or written word and expressing their thoughts and needs, a full child study team evaluation will follow. If the child is found to be eligible for special education for a communication disability, an IEP will be developed.

It is important to know that prior to kindergarten, a child can only receive speech/language services if it is also determined that the child needs special education services. Starting in kindergarten, the child may receive speech/language services without being deemed eligible for special education.

Glossary of Terms

Case Manager — One member of the CST appointed by the district’s director of special education who is responsible for coordinating the education and transition services of a student in special education.

Child Study Team (CST) — The group of school professionals that assist in determining a student’s eligibility for special education. The CST consists of a School Psychologist, Learning Disabilities Teacher Consultant (LDTC), and Social Worker. For children under the age of 5, a Speech Specialist must also be on the CST. Other specialists may be added as needed.

Free Appropriate Public Education (FAPE)—The entitlement guaranteed to a student with disabilities, between ages 3 and 21 by Federal and State Law.

Individuals with Disabilities Education Act (IDEA)—The federal law that guarantees children with physical and mental disabilities a “free appropriate public education” in the “least restrictive environment.”

Individualized Education Program (IEP)—A detailed plan describing the child’s current educational status, educational goals and objectives, as well as the services that will be provided to help the child reach those goals and objectives.

IEP Team—The group of people who develop the Individualized Education Program (IEP). By law, the IEP Team includes parents, the child’s case manager, at least one regular education and one special education teacher who provide instruction to the student and other school personnel and interested individuals invited by the school or the parents.

Initial Evaluation—The first time a child is tested to see if he/she is eligible to receive special education and related services.

Least Restrictive Environment (LRE)—Children with disabilities should be educated within the regular education program to the greatest extent possible. Students may be placed in self-contained, special education classrooms only when supports and services are not enough to help the child learn in the regular classroom.

School Psychologist—A member of the CST who tests and evaluates the child’s aptitude and intellectual functioning. This individual may also provide counseling to individual students or small groups and can be the case manager.

Social Worker—A member of the CST who, based upon information provided by the parent, reports the social history of the child’s background and can provide counseling and can be the case manager.

Learning Disabilities Teacher Consultant (LDTC)—A member of the CST who tests and evaluates a child’s achieved knowledge and academic learning, as well as determining the nature of the student’s academic disability. Can be the case manager.

Transition Plan—Once a student turns 14, or earlier if appropriate, the IEP must include a transition plan describing how the school will prepare the student for life after high school, such as college, employment or independent living. The student should be included in this planning. The needed services must be implemented when the student is 16 years old, or younger if it involves going to a vocational high school.

Sample letter to Director of Special Services to request an evaluation

Parent Name _____

Parent's Address _____

Parent's Phone Number _____

Date _____

Director of Special Services

Name of your School District

Address

Dear Director:

I am writing to request that my child, _____ (*name*), who is a student at _____ (*school name*) School in the _____ grade be given a complete child study team evaluation to determine whether my child is eligible for special education.

The reason I am making this request is that _____ (*name of student*) is not doing well in school. There are many problems that are getting worse.

I understand that I will hear from you within 20 calendar days of your receipt of this letter. Please contact me to let me know the date and time of our meeting.

Thank you in advance for your consideration.

Sincerely,

Parent's Name (*signed*)

(Send a copy of this letter to the director of special services, the principal of your child's school and your child's teacher.)

Sample letter to Case Manager to request an IEP meeting

Parent Name _____

Parent's Address _____

Parent's Phone Number _____

Date _____

CST Case Manager
(name)

Child's School _____

Address _____

Dear _____:

I am requesting an IEP meeting concerning my child, (name of student), who is a student at (school name) School in the _____ grade.

I am writing because I do not see sufficient progress and believe the IEP needs to be amended.

I understand that the school district will schedule an IEP meeting within 20 calendar days of your receipt of this letter. Please contact me to let me know the time and date of the meeting. Thank you in advance for your consideration.

Sincerely,

Parent's Name (signed)

Sample letter to Case Manager to request an independent evaluation

Parent Name _____

Parent's Address _____

Parent's Phone Number _____

Date _____

CST Case Manager

(name)

Child's School

Address

Dear _____:

I am requesting that the CST agree to an independent evaluation for my child, _____ (name of student), who is in _____ grade at _____ (school name) School. I believe that my child needs the following independent evaluations:

(list the applicable evaluations, such as: psychological, social, learning, psychiatric, neurological, speech/language, occupational, etc.).

(give reasons, such as: I disagree with the Child Study Team's reports, my child is not improving, getting worse or failing despite the IEP, or my child has been having increased behavior problems).

Please provide me with a list of independent child study teams, as soon as possible. Shall I contact them for the independent evaluations or will you make the arrangements? I understand that the school district has 20 calendar days from your receipt of this letter to respond but I hope it will take less time since I am very concerned. Thank you in advance for your consideration.

Sincerely,

Parent's Name (signed)

(Send a copy of this letter to the principal of your school and your child's teacher.)

Sample letter to Case Manager to request a re-evaluation

Parent Name _____

Parent's Address _____

Parent's Phone Number _____

Date _____

CST Case Manager
(*name*) _____

Child's School _____

Address _____

Dear _____:

It has been nearly 3 years since my child, _____ (*student name*), who is a student in the ____ grade at _____ (*school name*) School, has been evaluated. I am writing to request a complete learning re-evaluation by a Learning Disabilities Teacher Consultant to measure my child's progress and determine whether the current program is still the appropriate program. I understand that you have 20 days from your receipt of this letter to schedule a meeting with me to discuss the re-evaluation. Please contact me to schedule a mutually convenient date and time for the meeting. Thank you in advance for your cooperation.

Sincerely,

Parent's Name (*signed*)

(Send a copy of this letter to the principal of your child's school, the director of special services and your child's teacher.)

Helpful Contacts

Advocates for Children of New Jersey,

www.acnj.org, 973-643-3876

For help and information on navigating the special education system.

Legal Services of New Jersey's Education Representation Project

1-888-LSNJ-LAW (1-888-576-5529) or 732-572-9100 (outside of New Jersey)

New Jersey Department of Education

www.state.nj.us/education, 877-900-6960.

For general and special education questions, for questions regarding mediation or administrative due process hearings, including forms, parent information, contact information for county superintendents

New Jersey Department of Children and Families, Division of Child Behavioral Health Services

<http://www.state.nj.us/dcf/behavioral/>, 877-652-7624

For services and information about behavioral and mental health services

New Jersey Department of Health and Senior Services

<http://www.state.nj.us/health>, 1-888-653-4463

For information and for referrals to regional offices which provide evaluations and early intervention services (for families with children from birth to 3 years)

New Jersey Department of Human Services, Division of Developmental Disabilities

<http://www.state.nj.us/humanservices/ddd/services/apply/index.html>,
609-631-2200

For information and registration for services for people with developmental disabilities. (Each school district's department of special services should also have information about services offered through DDD).

New Jersey Department of Human Services, Division of Disability Services

<http://www.state.nj.us/humanservices/dds>, 888-285-3036

For disability related services, information and to obtain detailed resource guide to services

New Jersey Department of Labor, Division of Vocational Rehabilitation Services

www.dol.state.nj.us/labor/dvrs/DVRIndex.html,

609-292-5987 (voice), 609-292-2919 (TDD)

For information about and registration for vocational services (Each school district's department of special services should also have information about vocational services).



Advocates for Children of New Jersey is a non-profit, non-partisan organization. ACNJ is the trusted, independent voice putting children's needs first for more than 30 years. We educate the public and policymakers and equip caregivers with the information they need to be their child's strongest ally. Our work results in better laws and policies, more effective funding and stronger services for children and families. This means more children are given the chance to grow up safe, healthy and educated.

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