

Guide to Special Education

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The Legal Aid Society
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TABLE OF CONTENTS

About this Guide	2
Definition of Special Education	3
Free Appropriate Public Education	3
Least Restrictive Environment	3
Special Education Process	4
Step 1: Identification and Referral	5
Step 2: Initial Evaluation	6
Step 3: Eligibility Determination	7
Step 4: IEP Development and Implementation	8
Step 5: Annual and Triennial Reviews	10
Due Process Rights	10
Mediation	11
State Complaint	11
Impartial Hearing	12
Possible Outcomes for the Student	14
Pendency During Proceedings	14
About Us	15

ABOUT THIS GUIDE

This Guide has been developed to provide an overview of the special education process. It discusses the definition of special education, the rights of students after being classified, and the process a school district must follow to identify and classify students. It also outlines the rights of parents, and how disputes are handled. For additional information on special education, please consult:

- **NYS Education Department, Special Education:**
<http://www.p12.nysed.gov/specialed/quality/parents.htm>
- **Special Education in New York State for Children Ages 3-21: A Parent's Guide:**
<http://www.p12.nysed.gov/specialed/publications/policy/parentsguide.pdf>
- **Special Education in Plain Language: A User Friendly Handbook on Special Education Law, Policies and Practices in New York:**
<https://nebula.wsimg.com/e70cbf57e43bf20a86a79de78a358ecb?AccessKeyId=F3B51095384714C9A11D&disposition=0&alloworigin=1>
- **Regulations of the Commissioner of Education: Part 200: Students with Disabilities:**
<http://www.p12.nysed.gov/specialed/lawsregs/part-200-201-complete-july-2015.pdf>
- **Guide to Quality Individualized Education Program (IEP) Development and Implementation:**
<http://www.uft.org/files/attachments/iep-guide-feb2010.pdf>
- **Procedural Safeguards Notice:**
<http://www.p12.nysed.gov/specialed/publications/PSGN-dec2011.pdf>
- **Graduation Requirements for Students with Disabilities:**
<http://www.p12.nysed.gov/specialed/diploma-credentials.html>

DEFINITION OF SPECIAL EDUCATION

Special education is governed by the Individuals with Disabilities Education Act (“IDEA”). IDEA defines special education as “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.” Under this definition, the education of a student in special education must be customized to the student’s individual needs. The program is tailored in three ways:

- 1. Content: what information is taught
- 2. Method: how the information is taught
- 3. Delivery: where the information is taught

Free Appropriate Public Education

After a student is found eligible for special education, the student is automatically protected by certain rights. The student is entitled to a free appropriate public education (“FAPE”). The school must educate the student at no cost to the parents. The school cannot refuse to provide a service to a student due to the cost of that service. An education is appropriate when the student receives an “educational benefit.”

Least Restrictive Environment

All students with disabilities must be educated in the least restrictive environment (“LRE”). A student with a disability should be educated with his or her non-disabled peers to the maximum extent appropriate. When determining a student’s placement, the school district must move through the continuum of services from least to most restrictive. The continuum consists of, from least to most restrictive:

- 1. General Education Classroom With:
 - a. Related Services
 - b. Consultant Teacher Services
 - c. Paraprofessional Services
 - d. Resource Room Services
- 2. Integrated Co-Teaching (ICT)
- 3. Special Education Classroom
- 4. Separate School
- 5. Residential Facility
- 6. Hospitalization
- 7. Homebound Instruction



SPECIAL EDUCATION PROCESS

Step 1: Identification and Referral

Step 2: Initial Evaluation
- Must be Completed Within 60 Days of Parental Consent to Evaluate

Step 3: CSE Meeting to Determine Eligibility

Step 4: IEP Development and Implementation
- IEP Must be Developed Within 30 Days of Determining Eligibility

Step 5: Annual Review of IEP and Triennial Reevaluations

STEP 1: IDENTIFICATION AND REFERRAL

Child Find

The Child Find mandate, established under IDEA, requires each school district to create procedures to find and identify students who may need special education services.

Indicators that a Student May Need Special Education

Many reasons exist for why a parent would want their child evaluated for special education. Some factors may include: a student's poor academic performance; on-going behavioral issues affecting the student's academics; a physical or health condition; and a student's failure to respond to classroom accommodations and modifications.

Referral for Evaluation

Only a parent or school district designee can refer a child for a special education evaluation. However, a professional staff member of the school district, a physician, or a judge may request that a child be referred for an evaluation. If a request for referral is made, the CSE must, within **ten (10) school days**, request that the parent consent to a referral.



Referrals should be made **in writing** to the district's Committee on Special Education ("CSE"). When making the referral, it is extremely important to keep records. Save a copy of the letter and the confirmation that the letter was received—if you fax the letter, save the fax confirmation sheet; if you hand-deliver the letter, have the school stamp a copy to indicate it was received; if you mail the letter, send it certified mail, return receipt requested.

Informed Consent

Prior to evaluations, a parent must give informed consent. Informed consent requires that the parent:

1. Be fully informed, in the parent's native language, of the action to which they are agreeing, i.e., the evaluations and/or services;
2. Understand and agree in writing to the action; and
3. Give consent voluntarily, understanding that it can be revoked at any time.

If a parent does not consent, the school cannot evaluate the student. The school can, however, file an impartial hearing (see p. 12 below) where an Impartial Hearing Officer can order evaluations.

STEP 2: INITIAL EVALUATION

The goal of a special education evaluation is to determine whether the student has a disability and whether the student would benefit from special education services. Once the parent provides informed consent, the evaluation must be completed within **sixty (60) calendar days**.

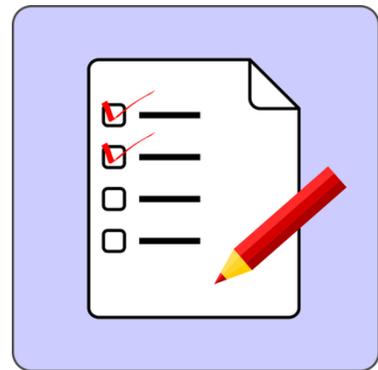
Initial Evaluation

An initial evaluation must be done by the school district at no cost to the parent. The special education evaluation requires that all areas related to the suspected disability be assessed. Required evaluations include:

- Psychological Examination, including IQ and social-emotional dynamics
- Educational Evaluation, including instructional needs, and learning strengths and weaknesses
- Social History
- Classroom Observation
- Physical Examination

Additional evaluations may be necessary based on the suspected disability. These evaluations may include:

- Speech and Language Evaluation
- Physical and/or Occupational Therapy Evaluation
- Assistive Technology Evaluation
- Hearing and/or Vision Testing
- Vocational Assessment, required at age 12



Behavioral Evaluations

Students having behavioral problems require additional testing. New York State law requires that any student whose behavior impedes learning must undergo a functional behavioral assessment (“FBA”). An FBA is designed to identify the cause of the student’s behavior. Once the cause is identified, a behavior intervention plan (“BIP”) is developed to address the behaviors.

Independent Evaluation

A parent who disagrees with the results of the initial evaluation can request an independent evaluation. A parent is entitled to one independent evaluation at the school district's expense. The request should be made in writing to the CSE. The school district must then:

1. Provide the evaluation; or
2. Initiate a due process hearing to prove that the initial evaluation was appropriate

Independent vs. Private Evaluation

An independent evaluation must be requested after the initial evaluation and is paid for by the school district. Consequently, the results of the evaluation are automatically released to the school district.

A private evaluation is arranged and paid for by the parent. Therefore, the parent may keep the results of the evaluation private and not share them with the school district.

STEP 3: ELIGIBILITY DETERMINATION

After the initial evaluation is completed, the parent and school district are each provided with a copy of the results. A CSE meeting is scheduled to determine the student's eligibility for special education services. The determination of eligibility must be based on a variety of sources, including the results of the evaluations, aptitude and achievement tests, parent input, and teacher recommendations.

Disability Classifications

To be eligible for special education, a student must have a disability. IDEA outlines thirteen (13) possible classifications:

1. Autism
2. Deaf-Blindness
3. Development Delay
4. Emotional Disturbance
5. Hearing Impairment
6. Intellectual Disability
7. Multiple Disabilities
8. Orthopedic Impairment
9. Other Health Impairment
10. Learning Disability
11. Speech or Language Impairment
12. Traumatic Brain Injury
13. Visual Impairment



A diagnosis of ADD or ADHD does not automatically qualify a student for special education. The student must fall within one of the above classifications.

STEP 4: IEP DEVELOPMENT AND IMPLEMENTATION

If a student is found eligible for special education, an Individualized Education Program (“IEP”) must be developed within **thirty (30) calendar days** of the determination.

IEP

Everyone who attends an IEP meeting must sign an attendance sheet. This sheet only records who is present; it does not mean that everyone agrees with the outcome of the meeting. Those involved in the development of the IEP must include:

- Parent
- Student, when appropriate
- General Education Teacher, if the student is or may participate in general education
- Special Education Teacher or Service Provider
- District Representative, the CSE Chairperson
- Individual who can interpret and explain the evaluation results, usually a school psychologist
- Anyone else the parent chooses, such as a doctor, therapist, advocate, or another parent

If any of the required members are not present, the meeting can only continue if the school district and parent agree in writing that the member is not necessary. The missing member must submit in writing, prior to the meeting, their input into the development of the IEP.

Though the IEP is developed specifically for each student and is tailored to the student’s needs, certain components must be included in all IEPs. An IEP must include:

- Present level of educational performance
- Disability classification
- Measurable annual goals
- How the child’s progress toward those goals will be measured (promotional criteria)
- Related services, including frequency, location, and duration of services
- Extent to which the student will participate with non-disabled peers
- Testing participation, accommodations, and modifications
- Transition plan for students 15 and older

After the IEP is developed, the parent must obtain a copy.

Related Services

Related services are supplementary aids or services that are necessary for a student to receive an educational benefit. Related services can include anything that is required for a student. Possible services include:

- Transportation, including travel to/from school and travel within the school building: generally, students with disabilities will receive transportation to the same extent as students without disabilities, unless their disability requires specialized accommodations
- Assistive Technology: any item, equipment, or system that helps a student participate in and benefit from school (ex. iPad, computer, pencil grip, communication board)
- Physical or Occupational Therapy: addresses student's gross and fine motor skills, respectively
- Orientation and Mobility: generally used for students with visual impairments to assist them in moving throughout their school, home, and community
- School Health Services: provided by a qualified person (typically a school nurse) to manage a student's health problems
- Speech and Language Therapy
- Counseling
- Hearing and Vision



Determining which related services the student will receive is based on the student's individual needs. Therefore, it is important for parents to prepare for the meeting and determine which services they would like the student to receive. Parents should be able to explain why these services are desired based on the student's disability and how the disability affects the student's educational performance.

Placement

Placement refers to the classroom where the student will be educated and must be based on the LRE (see p. 3 above). Placement must be arranged within **sixty (60) school days** from a parent's consent to evaluate. When the school district determines placement, it is important for parents to investigate to determine whether they believe the placement is appropriate. Parents should visit the school and classroom, and ask questions based on the student's needs. If a parent disagrees with the placement, the parent can discuss their concerns at a meeting to create or review the student's IEP, or the parent can proceed under one of their due process rights.

STEP 5: ANNUAL AND TRIENNIAL REVIEWS

Annual Review

A student's IEP must be reviewed at least once a year. This is a time when the IEP Team meets to discuss the student's progress, and potential modifications to the IEP. Parents can request additional meetings throughout the year if they have concerns.

Triennial Evaluations

A student receiving special education services must be reevaluated every three (3) years. The evaluation seeks to determine if the student still has a disability, and whether the student continues to need special education services. Evaluations must occur unless the parent and school district agree in writing that the evaluation is not necessary.

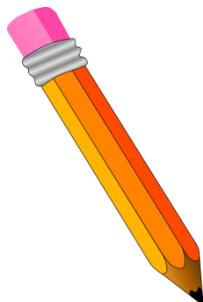
Parents or school districts do not need to wait three years, but can request new evaluations sooner. However, testing cannot be done more than once a year unless the parent and school district agree otherwise.

DUE PROCESS RIGHTS

Parents of students with disabilities have certain rights they can enforce when they disagree with the school district. These are known as their due process rights.

Prior Written Notice

When a school district proposes to evaluate a student, or change the student's classification, IEP, or placement, the school district must, within a reasonable time, provide the parent with prior written notice. This notice must be in the parent's native language.



Notice of Meetings

Parents must receive at least **five (5) days'** notice prior to any meeting during which the student's IEP will be developed or reviewed. The notice must include the date, time, location, and purpose of the meeting.

Procedural Safeguards Notice

Schools must notify parents of the full extent of the procedural safeguards provided to them under IDEA. This notice must be given at least once year. The notice must also be given:

- Upon initial referral or request for a special education evaluation
- The first time a parent or school district files a state or due process complaint
- Upon parental request

MEDIATION

Mediation is a voluntary process parents can follow to resolve disagreements. During mediation, a trained impartial mediator facilitates conversation between the parent and school district in an effort to reach an agreement. All conversations during mediation must be kept confidential and, in the event the mediation is unsuccessful, cannot be used during a later impartial hearing. If an agreement is reached, the parent and school district representative sign an agreement that becomes legally enforceable. If mediation is not effective, the parent can still exercise a different due process right.



STATE COMPLAINT

A parent can file a complaint with the New York State Education Department (“NYSED”) alleging a violation of state and/or federal law. Complaints must be filed within **one (1) year** of the alleged violation. In addition to mailing the complaint to NYSED, the parent must mail a copy to the school district.

The complaint must include:

- Statement that state and/or federal law was violated
- Facts on which this statement is based
- Contact information for the person filing the complaint
- Name and address of the student
- School name
- Description of the nature of the problem, including facts leading to the complaint
- Proposed resolution

A sample complaint can be found at:

<http://www.p12.nysed.gov/specialed/formsnotices/samplecomplaint.htm>

Once the complaint is received, NYSED reviews it to determine whether a violation has occurred. NYSED issues a written decision of its findings within **sixty (60) days** after the complaint is filed. Issues in the complaint may be set aside if they are being litigated in a due process hearing. Any resolution from a due process hearing is binding and will not be set aside.

IMPARTIAL HEARING

An impartial hearing is an administrative proceeding on a special education issue that the parent and school district disagree about. A hearing can be requested by either the parent or the school.

Process for Filing an Impartial Hearing Request

The hearing request must be filed within **two (2) years** of the date the parent or school “knew or should have known” about the alleged violation. A parent seeking an impartial hearing must file a complaint with the school district and NYSED.

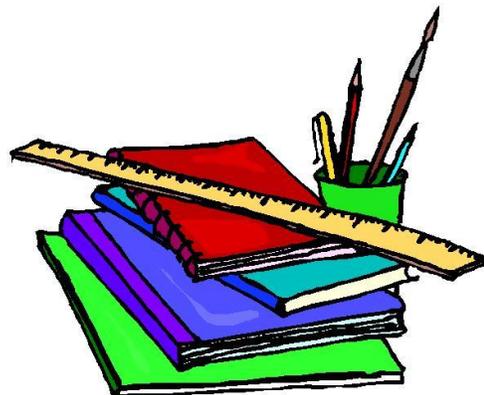
The complaint must include:

- Student’s name
- Student’s address
- Name of school
- Description of the nature of the problem
- Desired outcome

A sample complaint form is available at:

<http://www.p12.nysed.gov/specialed/formsnotices/dueprocesscomplaint/notice314.htm>

Within **ten (10) days** of receiving the complaint, the school district must respond to the request for an impartial hearing.



Resolution Session

The resolution session is a meeting between the parent and school district to discuss the issues and try to resolve the problem. It must be scheduled by the school district within **fifteen (15) days** of receiving the complaint. The resolution meeting is mandatory and must be attended by both parties. If the parent fails to attend the meeting, the impartial hearing will be delayed. If both parties agree in writing, the resolution meeting can be waived.

If an agreement is reached during the resolution session, both parties sign an agreement that becomes legally enforceable. The agreement can address any or all of the alleged complaints. If only some of the issues were resolved, the document must state it is only a partial agreement. Once signed, either party can void the agreement within **three (3) days**. If no resolution is reached within **thirty (30) days** of the school district receiving the complaint, the parties can move forward with the impartial hearing.

The Hearing

A pre-hearing conference must be scheduled within **fourteen (14) days** if the resolution session does not result in a settlement. The pre-hearing conference clarifies the issues, sets a date for the hearing, and identifies evidence to be admitted and people who will testify.

The impartial hearing is a legal proceeding that occurs in a similar format to that of a trial. It is presided over by an Impartial Hearing Officer. During the hearing, each party is able to present an opening statement outlining their position and what they hope to prove. Next, each party will have the opportunity to call and question their own witnesses, and to question the other party's witnesses. Finally, each party will present a closing statement summarizing what they presented. A record of the hearing will be made.

During the hearing, each party has the right to be represented by counsel and present their own evidence. If a parent hires an attorney and wins at the hearing, they are entitled to reimbursement for their legal fees.

Impartial Hearing Officer's Decision

The Impartial Hearing Officer makes a decision based on all the evidence heard. The parent will receive a copy of the decision.

The Hearing Officer's decision is final unless one of the parties appeals to the State Review Officer ("SRO"). Please consult the SRO website at www.sro.nysed.gov for the regulations and forms relating to filing an appeal.

POSSIBLE OUTCOMES FOR THE STUDENT

Obtain an Evaluation

A parent may be able to obtain a private evaluation of the student if the parent can establish that the school district's evaluation was insufficient and the school did not provide an independent evaluation.

Classification Change

If a parent and school disagreed on a student's special education classification, exercising a due process right can result in changing the student's IEP classification.

Classroom or School Placement Change

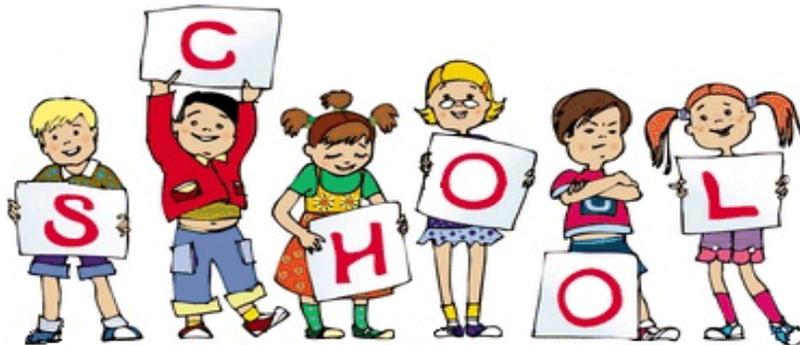
A student may move to a more or less restrictive environment. This can include a change between a general and special education classroom, or a change between schools, depending on the student's needs.

Change in Services

Parents can obtain additional or fewer related services. It is possible to add or remove entire services, or change how often a service is provided.

PENDENCY

After a parent files for mediation or an impartial hearing, the student has the right to stay in his or her placement at the time of the filing. This is known as "pendency" or "stay-put."



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For Additional Questions, Please Call:

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