A Basic Guide to Special Education

2014 Edition

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for ADVOCATES CHILDREN OF NEW JERSEY

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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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 disabilities or who have problems in school and to educate parents about their children's rights. It summarizes the basic procedures, services and rights of children to an education and represents current federal and state 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, resource 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 age 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. 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 ensuring that children who are eligible for special education receive appropriate services. These services are delivered under the direction of the local school district and 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 CST 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 IEP 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 IEP by using certain procedures. These are known as "procedural rights" and include requesting independent evaluations, mediation and/ or "due process hearings," which are described later in this guide.

Navigating the Special Education

IDENTIFICATION
I suspect my child has a learning disability.
What should I do?

↓

20 DAYS

Request, **in writing**, an **EVALUATION** from the Department of Special Services in your school district.

↓

The **Child Study Team (CST)** will screen your child and respond to your request.*

↓

90 DAYS

If the CST determines a full evaluation is warranted, a meeting will be scheduled to secure written parental consent for the evaluation and to determine the scope of the evaluation.*

↓

EVALUATIONS are conducted.
Results are shared with the parent(s).*
ELIGIBILITY for Special Education is determined.

↓

If the child is classified as eligible for special education, an **INDIVIDUALIZED EDUCATION PROGRAM** (IEP) is developed and implemented.*

↓

Parents must sign consent before the initial IEP can be implemented and the child is given an appropriate placement.

If at any point in the process you disagree with a decision, you have the right to request **STATE MEDIATION** and/or **DUE PROCESS.**

Important Facts and Advocacy Tips

1. Every request a parent makes of the CST 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 a disability. 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 out of home placement/ homeless.
3. There can be **NO** "waiting list" for a parent requesting an evaluation.
4. The school district's special education office must respond to a parent within 20 days of receipt of a parent's written request. This means that an evaluation can be started at any time – 12 months a year. It is **NEVER** "too late in the school year" to begin the process.
5. The parent must receive copies of the evaluation reports at least 10 days before a scheduled meeting between the parents and the CST to determine the child's eligibility for special education. All notices including letters must be in a language that the parent understands, unless clearly not possible.
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, which includes the parent, must develop an IEP for that child.
9. The CST is comprised of a school psychologist, a learning disabilities teacher-consultant (LDTC) and a social worker. A speech-language specialist, an occupational and physical therapist may also serve on the CST, as needed. 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. The parent also has the right to have an interpreter present during meetings, unless clearly not possible.

12. The cost of services may not be used as a factor in the CST's decisions. A parent may not be required to use health insurance to pay for services required by the IEP, or for evaluations that the CST agrees are needed.
13. After participating in the development of the **initial** IEP, the **parent must give written consent** before the program is implemented.
14. The parent should go to all IEP meetings and, if possible, bring another adult, such as a spouse, friend or advocate. The parent has 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. A parent cannot be required to sign off on the program at the meeting where the plan is first developed.
16. When there is disagreement about evaluation results or the education program, the parent can request (in writing) that the CST agree to 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. 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. A parent does not have the final say when there is disagreement with the school district's decision. When disputes cannot be resolved, the parent's only option is to request State mediation and/or a due process hearing.

Special Education Screening and Evaluation

Under state and federal law, students 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 a parent believes his/her child has one of these disabilities and needs special education services, the parent should send a written request for evaluations to the Director of Special Education in the school district in which the family resides or the school district where the student attends school if the student is in out of home placement/ homeless.

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 student'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 student'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

During the first CST meeting, a determination is made about whether or not a student will receive formal evaluations. The CST must provide a parent with a written notice if the request for evaluations is denied.

If evaluations are agreed to, 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 student in all areas of suspected disabilities will be undertaken. A parent must provide written consent to the evaluations and must receive a written notice confirming what evaluations will be conducted. The assessments include, but are not limited to, the following components:

- At least two assessments by members of the CST
- Other specialists (i.e. neurologist, audiologist, etc.) in the area of suspected disability
- The use of appropriate standardized tests
- An assessment of functional academic performance and behavior in which the appropriate member of the CST observes the student and describes the student's performance and/or behavior
- If it is suspected that a student has a behavioral or emotional problem, a psychiatrist should also evaluate the student.

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.

Parents must receive copies of all the evaluations **at least 10 days** before the eligibility meeting. If the parent disagrees with an evaluation, the parent can make a written request to the CST for 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 evaluations, unless the parent signs a written consent stating that a

re-evaluation is unnecessary. However, re-evaluations or new evaluations may be appropriate at other times if it appears that a student's IEP needs to be changed because it is not meeting the student's needs.

Whether a student needs special education services is a joint decision made at an eligibility meeting by the parent(s), teachers, the case manager and other members of the CST. These participants review reports, teacher and parent observations and decide if the student will be "classified" as "eligible for special education and related services." If the student is found eligible, the IEP team (described below) will meet to develop the IEP.

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 education 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 achievement and 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 goals and objectives.

The law requires that the following procedures be followed:

- Once the student is determined eligible for special education, the IEP team must meet to discuss and develop the IEP. This meeting usually takes place immediately following the eligibility meeting. At this time, the parent will be presented with a proposed IEP.
- The IEP must be implemented no later than 90 days following written parental consent for the initial evaluation.
- A copy of the agreed upon IEP that is signed by the parties must be provided to the parent(s).
- The initial IEP cannot be implemented without a parent's written consent.
- The IEP team must meet to review the IEP once a year typically around the anniversary of the first IEP meeting. 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.
- 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 c**alendar** 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 student'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 student's education needs are determined, an appropriate placement in the least restrictive environment must be identified. For some students, the least restrictive setting is the general education classroom with supports, modifications 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 in a day or residential program. 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 student'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

Children ages 3 through 5 who have **not** received Early Intervention Services but show signs of developmental delays and/or other disabilities may be entitled to CST evaluations. Parents should request CST evaluations by writing to the director of special education in the school district where they live.

The evaluation procedure and the requirements for an IEP are generally the same as for older students, except that all preschoolers are classified as "preschool disabled." The law also requires that a speech-language specialist be part of the CST when evaluating a student for preschool services.

Every school district must provide preschool programs for students 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 student'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 student 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 one of the 12 categories listed on page 7. This makes a student eligible for special education and related services when entering kindergarten.

High School 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 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 (usually before/ just after 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 a test to see whether they are prepared to do college-level work or whether they need additional courses first.

Life Skills Programs
When applicable, the IEP must describe a student's needs 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. The school district is responsible for ensuring that a student reaches his/her IEP goals regarding life skills before high school graduation.

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. Three years 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.

Services Available Through State Agencies

There are several state agencies that provide services to people with disabilities. This section provides a brief explanation of some agencies that help youth and their families prior to high school graduation, during the transition process and after high school graduation. Information and registration forms can be obtained through the school district's office of special education or by contacting these agencies directly. While the case manager should provide information and assistance, the parent is responsible for registering their child for services. (see Helpful Contacts)

The New Jersey Department of Children and Families – Children's System of Care (CSOC)

CSOC provides non- educational services for children and youth with developmental disabilities and services for emotional and behavioral health. Parents must apply for the services. These services include community services, home services, residential services outside the home, and support services to the family. These services may include personal care, training and residential care and family services such as after school care, respite services, counseling, crisis intervention and counseling, and medical care at home. Some services may be received as soon as the child is registered and eligible but there are waiting lists for many services. Individuals between 18 and 21 years of age must register for services with The New Jersey Department of Human Services, Division of Developmental Disabilities (DDD). If DDD concludes that the individual is eligible, services will be provided by CSOC.

The New Jersey Department of Human Services - Division of Developmental Disabilities (DDD)

These services are for individuals who are over 21 years old who have a developmental disability as defined below. Individuals between the ages of 18 and 21 must also register for services with DDD (see previous page).

A developmental disability is defined as a developmental or intellectual disability that is permanent and is identified before the individual turns 22 years old. These services include community services, home services, residential services outside the home, and support services to the family. These services may include personal care, training and residential care and family services such as after school care, respite services, counseling, crisis intervention and home health care. Some services may be received as soon as the individual is registered and eligible but there are long waiting lists for many services.

New Jersey Department of Labor and Workforce Development, Division of Vocational Rehabilitation Services (DVRS)

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 up to 2 years prior to graduation. In addition, beginning at age 14, DVRS counselors can provide consultation to students, parents and school personnel. DVRS staff are available to coordinate and consult with the CST to create a transition plan even for students who have not yet applied or been found eligible for services. The application forms and contact phone number can be obtained from the school's Department of Special Services or by contacting DVRS.

New Jersey Department of Human Services -Division of Disability Services (DDS)

Adults who become disabled due to illness or work may register for services with this agency. Services may include programs at home and in the community. DDS publishes an annual guide regarding all kinds of resources for people with disabilities (in English and Spanish).

How to Challenge School Districts' Decisions

Any time during a student'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 student's education. Meetings must be scheduled at a mutually-agreeable date and time. Whenever the school district proposes a change to the Individualized Education Program, the student's placement or to the evaluation, a school official must inform parents of proposed changes, in writing, 15 days before making the changes.

Parents have 15 days to oppose the school district's plans. If the parents cannot reach an agreement with the district, they must file for Due Process and/or Mediation during those 15 days. Otherwise, the school district can take the proposed action without parental consent. All notices 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 a parent wants an IEP meeting or wants to change the IEP, or if there is disagreement with an evaluation or a proposed IEP, the parent must provide the school district with **written** notices and/or **written** requests, which should always be addressed to the student'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 rights to disagree with the CST's actions or inactions and provides a way to exercise those rights**.** These rights are called "due process rights." A parent may exercise these due process rights to resolve disagreements that arise at **any stage** of the special education process. A parent 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).

When a due process complaint is filed by the parent, the school can request a "resolution" meeting which is 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. The parent can elect to go to mediation instead of having a resolution meeting. If the parent and school district agree to skip the resolution meeting, a state mediation session will be scheduled prior to the due process hearing with an Administrative Law Judge (both mediation and due process are described below).

The New Jersey Department of Education has the forms which should be used to appeal a school district's decisions. 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 Helpful Contacts).

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 Due Process.

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). Once a request for a due process hearing is received by state special education office, 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 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 the same school year and school day as students 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/programs with their non-disabled peers.

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 and Common Core State 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
In general, 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. Schools must try to improve their behaviors through effective plans, including positive supports instead of punishment.

In general, students in special education cannot be suspended from school for behavior caused by their disability and cannot be expelled, although their placements can be changed. A parent may ask for additional evaluations to determine if behaviors are linked to the student's disability and to determine appropriate changes to the IEP. These must be conducted before a CST meeting/ hearing is held to determine whether a student's placement will be changed as a result of misconduct.

These rules also apply to students who may be eligible for special education services but have not been identified as such by the school district. In this case, a student has the right to a CST evaluation before an expulsion hearing.

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

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. These are not considered 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.)

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 students in regular education who are having learning, behavioral or health difficulties in school. These services and supports are for students who are ineligible 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 students who need help. These professionals may give advice 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 CST. In other districts, members of the CST will be part of the IR&S team.

Parents should be involved in the development of this plan but parental consent is not required for these services. The purpose of this team is to provide guidance to teachers and parents and provide services to the student.

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 student try IR&S services before receiving child study team evaluations.

Speech and Language Services

If a student has a suspected speech or language disability, the student 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 student's educational performance, performing an evaluation and preparing a written report. (This service can also be provided to students who need special education).

After the speech-language evaluation is performed, a meeting will be held to determine whether the student 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 student is eligible for speech-language services. If it is suspected that a student 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 student 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 student can only receive speech/language services if it is also determined that the student needs special education services. Starting in kindergarten, the student may receive speech/language services without being deemed eligible for special education.

Services/ Accommodations under Section 504 of the Rehabilitation Act

A federal law: Section 504 of the Rehabilitation Act protects the rights of individuals with disabilities. This law prevents discrimination by any entity/ institution that receives federal funds, such as public schools and universities. Every student who has an IEP is protected by this law. Some students have a disability that does not require instruction from a special education teacher. Yet, they may require services, supports and accommodations to have a meaningful opportunity to learn to their full potential in school. These students are protected by this law. Students who have a "disability" as this term is defined under Section 504 have "a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such impairment." Examples of "impairments" are ADHD, severe allergies, diabetes, epilepsy, orthopedic impairments, vision or

hearing problems. "Major life activities" include breathing, walking, learning and caring for one's self.

Similar to the IEP process, if the school district believes that a student needs education services or accommodations, it must notify the parent that assessments/ evaluations should be performed to determine the reason for the student's problems in school. The student has the right to receive objective assessments (such as CST evaluations). Parents may also provide the school district with evaluations that they have paid for as evidence of a disability. Parents are entitled to receive a written determination regarding eligibility for 504 services. As with an IEP, a student has the right to a free appropriate education in the least restrictive environment. A written 504 plan is required that states all the accommodations, supports and services that will be provided so that the student will have the same opportunity to learn and participate in school activities as non-disabled students. Services can include the same therapies, supports and accommodations that are available through an IEP. An annual meeting must be conducted to review and/or to revise the plan. A parent has the right to participate in the annual meeting and may seek mediation/due process if a dispute arises that cannot be resolved.

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 and program in special education. The CST consists of a School Psychologist, Learning Disabilities Teacher Consultant (LDTC), and Social Worker. For students 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 students with physical and mental disabilities a "free appropriate public education" in the "least restrictive environment."

Individualized Education Program (IEP) – A detailed plan describing the student's current educational status, educational goals and objectives, as well as the services that will be provided to help the student 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 student'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 student is tested to see if he/she is eligible to receive special education and related services.

Least Restrictive Environment (**LRE**) – Students 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 student learn in the regular classroom.

School Psychologist – A member of the CST who tests and evaluates the student'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 student's background, can provide counseling and can be the case manager.

Learning Disabilities Teacher Consultant (**LDTC**) – A member of the CST who tests and evaluates a student's achieved knowledge and academic learning, as well as determining the nature of the student's academic disability and 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. If appropriate, 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)
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 signature)_____
Parent name printed

(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 request an IEP meeting

Parent Name_____
Parent's Address_____
Parent's Phone Number____
Date_____

CST Case Manager_____(name)_
Child's School_____
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 signature)_____
Parent name printed

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

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 signature)_____
Parent name printed

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

Sample letter to Case Manager 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, _____name of student)___, 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 signature)_____
Parent name printed

(Send 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, Children's System of Care (CSOC) www.state.nj.us/dcf/families/csc/ 24 hour access: 877-652-7624 For registration of children less than 18 years old and for information and services relating to emotional and behavioral disabilities for children less than 21 years old.

New Jersey Department of Health, Family Health Services (Early Intervention System) www.state.nj.us/health/fhs/eis 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 (DDD)
www.state.nj.us/humanservices/ddd/services/apply/index.html
800-832-9173 For registration of individuals with developmental disabilities between the ages of 18- 21 and for information and services for individuals who are 21+.

New Jersey Department of Human Services, Division of Disability Services (DDS) www.state.nj.us/humanservices/dds, 888-285-3036
For registration, information and for services for individuals who become disabled as adults and to obtain a detailed resource guide to services - published annually.

New Jersey Department of Labor and Workforce Development, Division of Vocational Rehabilitation Services (DVRS)
lwd.dol.state.nj.us/labor/dvrs/DVRIndex.html, 609-292-5987 (voice), 609-292-2919 (TDD) For information about and registration for 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.

To maintain our independence, we accept no government funding for our advocacy work and rely on donations from individuals and foundations to sustain our work on behalf of New Jersey children.

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