

A Basic Guide to Special Education



2022 Edition

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A Basic Guide to Special Education

This guide is intended to be a reference for people who have questions about the laws regarding children who have disabilities that affect their ability to learn. It summarizes the laws regarding basic procedures, services and the rights to special education, as well as other important education rights of children with disabilities, representing federal and state laws and regulations. However, this Guide is not intended to offer legal advice, nor does it substitute assistance from an attorney. For additional information or assistance regarding this Guide and the education rights of children, parents/caregivers should contact Nina Peckman, Esq. at Advocates for Children of New Jersey. Written materials are also available through ACNJ's KidLaw Resource Center at www.kidlaw.org. This Guide is available in Spanish and Spanish consultations are available. (*Esta Guía es disponible en Español y se proporcionan consultas en Español.*)

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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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Introduction

Special education can be confusing and frightening for parents who suspect their child has a disability or has difficulty learning. They want to know how to help their child succeed academically and access proper supports.

The New Jersey State Department of Education defines “parent” as:

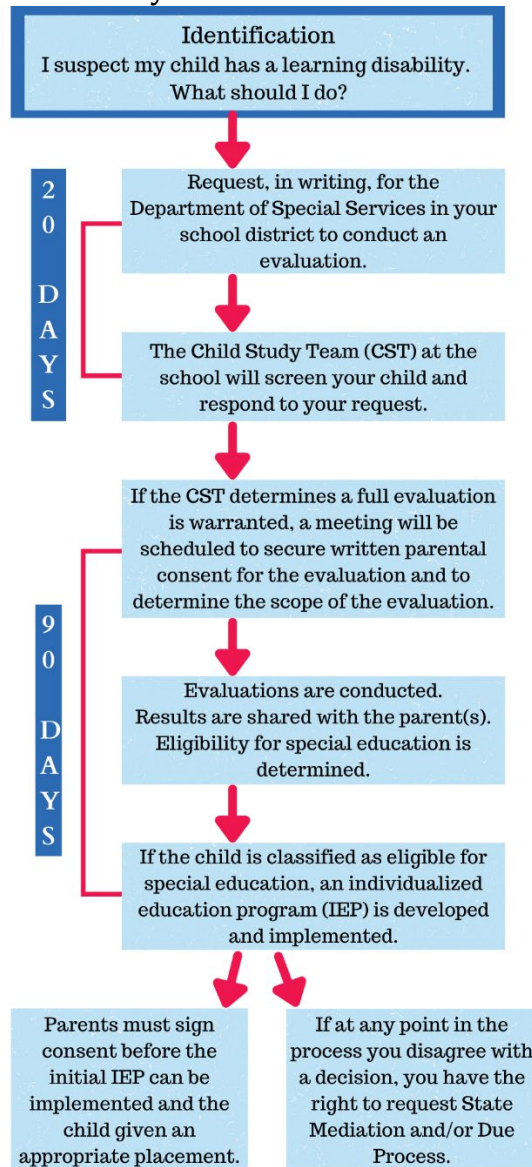
The natural or adoptive parent, the legal guardian, resource parent who is willing to make decisions, a surrogate parent, a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student’s welfare), or a student who is 18+ years of age unless a Court order has been entered appointing a guardian. Unless parental rights have been terminated by a Court order, the parent retains all rights under education laws.

According to federal and New Jersey state laws,¹ schools must provide what is known as a [free appropriate public education \(FAPE\)](#) in the [least restrictive environment \(LRE\)](#) to all children with disabilities from age three through age 21 or until high school graduation, whichever comes first. Local school districts must comply with federal and New Jersey state laws, as well as the rules and guidance established by the New Jersey Department of Education (NJDOE). The purpose of this guide is to help parents know when and how to advocate when they believe that their school district is not complying with the law. Parents have a legal right to participate in the development of their child’s special education program and other education decisions. Their involvement and collaboration with school staff and their in-input is critical to ensuring their children meet education goals and succeed in school.

When issues are not addressed or resolved, you may contact ACNJ for assistance by visiting www.acnj.org, calling (973) 643-3876 or emailing Staff Attorney Nina Peckman at npeckman@acnj.org

¹ The Individuals with Disabilities Education Act (IDEA), see 20 U.S.C. Section 1400 and 34 CFR Part 300. Section 504 of the Rehabilitation Act, see 29 U.S.C. Section 794 and 34 C.F.R. Part 104. The Americans with Disabilities Act, see 28 CFR Part 36. New Jersey Statutes, see N.J.S.A. 18A. NJDOE Administrative Code: N.J.A.C. 6A:14.

Navigating the Special Education System²



Special Education Screening and Evaluation Process

Students who have disabilities that affect their ability to learn in school may be eligible for special education services. When students are found to be eligible, the [child study team \(CST\)](#) must determine the basis for eligibility with the parent, which is known as the “classification.” The classification will be one of the following categories, as established by the [Individuals with Disabilities Education Act \(IDEA\)](#) and New Jersey regulations:

- Auditory impairment, such as deafness or hearing impairment
- Autism

² Based on New Jersey Administrative Code 6A:14 et. seq.

- Intellectual disability (mild, moderate or severe)
- Communication impaired - a language disorder
- Emotional regulation impairment
- Multiple disabilities (two or more equally disabling conditions)
- Blindness
- Orthopedic impairment, including malformation or malfunction of bones, muscle or tissue
- Other health impairment, including chronically ill
- Preschool child with a disability (ages 3-5)
- Social maladjustment
- Specific learning disability
- Traumatic brain injury (TBI)
- Visual impairment

Screening

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

- The school nurse will conduct a vision and audiometric (sight and hearing) screening of the student. They will also summarize the child's available health information.
- The student's teacher will be consulted about the child's academic progress and behavior.

The Identification Meeting (The Initial Meeting)

- An initial meeting must be held within 20 calendar days (excluding school holidays but not summer vacation) of receiving the written request to determine whether a formal evaluation is warranted.
- This meeting is conducted by the CST with the parent(s), the student's classroom teacher and possibly other relevant school staff.
 - The CST consists of a [school psychologist](#), a [learning disabilities teacher consultant \(LDTC\)](#), a school [social worker](#) and, in certain cases, a speech-language specialist (see below). Additional specialists as needed may be part of the CST, such as a physical therapist, occupational therapist, reading specialist and behaviorist.

The Evaluation Process

During the identification meeting, a determination is made about whether or not a student will receive formal evaluations. The determination is based upon a discussion between the CST, school staff and parent. Together, the group reviews current performance, concerns, available data, medical reports and observations made by

school staff and parents. Based upon this information, the CST will propose the evaluations they believe should be conducted. Parents can also request other evaluations. The CST must provide a parent a written notice of their decision within 15 calendar days.

If the evaluation request is denied, the parent may file for State Mediation or a Petition for Due Process, which is the name of the complaint. (read more on [page 23](#)) 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. 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:

- At least two assessments by members of the CST,
- Other necessary specialists in **all** areas of the suspected disability such as a neurologist, speech and language pathologist, audiologist, reading specialist, behaviorist and psychiatrist,
- The use of appropriate standardized tests by qualified specialists, and
- A functional academic and behavior assessment, if needed, during which the appropriate member of the CST observes the student and describes the student's performance and/or behavior.
 - Parents may but are not required to pay for evaluations and may but are not required to share private evaluations.

The school district has 90 days from the date of the parent's written consent to complete the evaluations, meet with the parent to explain the results, determine eligibility for special education services and, if eligible, develop and implement an appropriate program. Parents must also receive copies of all the evaluations at least ten calendar days before the eligibility and IEP development meetings.

Re-evaluations and Triennial Evaluations

At least one re-evaluation must occur every three years from the previous evaluations. Re-evaluations or new evaluations may be required sooner if it appears that an IEP is not addressing the student's needs or when the district seeks a change in eligibility/program. While the parent may waive this right, agreeing not to re-evaluate, re-evaluations provide important information regarding a student's progress, the effectiveness of the IEP and how to modify the IEP. Re-evaluations must be completed within 60 days of a parent's written consent.

The Right to Independent Evaluations

A parent may ask for an “[independent evaluation](#)” - a term that refers to evaluations conducted by professionals who are not employed by the district, who both the parent and district agree to use and who are paid for by the district. The district must give parents a choice of professionals and parents can also suggest someone. Districts may set a maximum allowable charge but it must be reasonable given the typical rates charged by professionals in the community. A parent has the right to request an independent evaluation when they disagree with the district’s evaluations and/or evaluation process. The grounds for an independent evaluation request typically include one or more of the following factors:

- Evaluations were not conducted in all the areas of concern.
- Evaluations were not comprehensive (e.g., the methods used to evaluate provided information that was too general, it did not cover all areas of concern, etc.)
- Evaluation reports excluded relevant information needed to determine the needs of the student.
- The CST failed to conduct an evaluation that should have been performed as part of the initial or re-evaluation process.
- The CST refused to evaluate the student after considering reports provided by the parent as part of the request for an initial CST evaluation.
 - It should be noted that schools can ask but not demand that parents provide the reasons for their request. In addition, parents are only entitled to request independent evaluations once every three years. As this can be a complex issue, parents should consider consulting with an advocate.

The Eligibility Meeting

The parent(s), teachers, case manager, other CST members and professionals invited by the parent and/or school district will make a joint decision whether a student needs special education services at an eligibility meeting. There, participants will review reports, as well as teacher and parent observations. They then decide if the student is eligible for special education under one of the previously mentioned [eligibility categories](#). If the student is found eligible, then an [Individualized Education Program](#), or “IEP,” meeting should be held without delay, usually immediately following the eligibility meeting.

The Individualized Education Program (IEP)

An IEP is the written agreement between the school district and parent(s). It identifies all programs and services that the school district will provide to the student within a 12-month period, as determined through the evaluation process. As with any legal agreement, it can be modified or changed.

IEP development is a team effort, which must include:

- Parent(s),
- The student (if appropriate),
- A case manager,
 - 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.
- One of the student's regular education teachers, if applicable, or a regular education teacher knowledgeable about the school's program,
- One special education teacher,
- Any specified school staff, and
- An administrator with supervisory authority.

Note, other individuals, including experts with pertinent information invited by either the parents or the school district, may also attend.

The IEP describes:

- An overview of the student's achievements and performance, including dates and summaries of evaluation reports, teacher observations and relevant medical diagnoses,
- Measurable annual goals and short-term objectives or benchmarks, and
- Modifications, supports and other instructional services specially designed for that student.
 - Note, the IEP must be reasonable so that the student can make appropriate progress in light of the student's circumstances.

The IEP must also describe the related services the student must have in order to learn, including how many sessions and minutes they will receive weekly, whether services will be given in a group and/or individual sessions, and whether they will be in a class with children without special education services or be placed in a separate setting.

Related services may include but are not limited to:

- Occupational therapy
- Physical therapy
- Speech-language services
- Reading services
- Counselling
- Applied Behavior Analysis, also known as "ABA" services
- Social skills

The IEP should describe all other services and/or special supports such as:

- School nurse services,
- Transportation,
- Assistive technology,
- Recreation,
- Medical services (for diagnosis only),
- An extended school year (when an interruption in education may cause the student's performance to decline and the loss cannot be made up in a reasonable time), or
- A one-on-one or shared aide.

Placement in the least restrictive environment (LRE)

Placement decisions should be made only after all the student's education needs are identified. The student is entitled to be placed in the [least restrictive environment \(LRE\)](#) - the placement where the student's academic and/or behavioral needs can be met while also providing the opportunity to learn with non-disabled students, a challenging curriculum and an equal opportunity to participate in non-academic, extracurricular services and activities, to the greatest extent possible.

Depending upon the individual needs of the student, the LRE may be:

- A general education classroom with supports, modifications and services as needed for all or some of the students,
- A combination of general education and resource classes (smaller classes with a special education teacher),
- a "self-contained classroom," defined as a class taught by a special education teacher with a limited number of students who have more severe learning or behavioral disabilities,
- An alternative education program, including a private special education placement outside the district that is approved by the New Jersey Department of Education,
- An accredited private school that has not been approved by the New Jersey Department of Education (used in special circumstances),
- Another school district, a state-run program or out-of-state program,
- A vocational school,
- Residential, community rehabilitation or hospital-based placement, or
- Home instruction, considered to be most restrictive and should generally only occur on a temporary basis until an appropriate program is found.

The following procedures should be followed in developing an IEP:

- At the IEP meeting, the parent should be presented with a draft copy of the proposed IEP but cannot be required to sign it at the meeting.

- A copy of the final and signed IEP must be provided to the parent.
- The initial IEP cannot be implemented without a parent's written consent.
- Subsequent IEPs do not require the parent's signature. They may go into effect 15 calendar days after the parent receives the final IEP unless the parent informs the CST they disagree with the IEP and/or the parent files for Due Process.
- The initial IEP should be implemented no later than 90 days following written parental consent to the CST evaluations.
- The [IEP team](#) must meet to review the IEP at least once a year, typically around the anniversary of the first IEP meeting. However, the IEP team can meet at any time during the year if it is necessary to discuss problems or changes to the IEP.
- A new IEP should be developed at the annual review and implemented without delay.
- Until a new IEP is implemented, the existing IEP will stay in effect unless otherwise agreed to by the parent and CST.
- The parent and CST can agree to implement the parts of the IEP that have been agreed to while at the same time trying to resolve disputes or while waiting for the results of additional evaluation reports.
- If a proposed IEP changes the student's placement or significant part of the student's program and the parent disagrees, the parent must file for Due Process within 15 calendar days of receiving the final IEP. Filing a Due Process petition will cause "stay-put," which means that until there is a resolution/court decision, the student's placement and program cannot change.

Special Education for Preschool Students Ages 3-5

Children ages 3-5 who show signs of developmental delays and/or other disabilities may be entitled to special education services. 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." However, for preschool, a speech-language specialist must be part of the CST to determine whether to evaluate a student for a speech and language impairment.

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 ten hours. Some students will be eligible for more intensive services and a longer school day.

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. 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, an IEP will be developed and the student shall be classified using one of the 14 categories listed on [page 6](#).

Early Intervention from Birth to Age 3, and Transitioning to Pre-K

Federal law mandates that early intervention services be provided to children from birth to three years old 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.

Children who are receiving early intervention services and who will need special education are entitled to have their IEPs implemented by their districts on their third birthday. For a smooth transition to preschool without interruption of services, the following steps should be taken:

- The service coordinator should notify the school district 120 days before the child's third birthday that a child with special needs will be enrolling in the school.
- A member of the CST and the parent must participate in the early intervention preschool transition planning meeting.
- Parents should write to their school district's director of special education to request a CST evaluation at least 110 days before their child's third birthday to avoid an interruption in services.
- The service coordinator should provide the early intervention records to the school district's CST and may participate in the child study team meeting. The CST should consider these records and other parent reports to determine eligibility and necessary services.

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 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 spoken or written word and expressing their thoughts and needs, a full CST 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 note that prior to kindergarten, a student can only receive speech/language services if the student needs special education services. Starting in kindergarten, the student may receive speech/language services without being deemed eligible for special education.

Reading Disabilities

Students who exhibit one or more potential indicators of dyslexia or other reading disabilities must be screened by a teacher or other trained school staff member using a screening method approved by the New Jersey Department of Education. This screening must occur no later than the end of the first semester of second grade. If it is determined that the student may have dyslexia or another reading disability, if the student is not responding to intervention, the district should consider paying for a comprehensive assessment by an appropriately certified reading specialist. Students who are diagnosed with dyslexia or other reading disability may also be eligible for CST evaluations to determine if they need special education services or a 504 plan. See [Resources](#) for more information.

High School Transition Services

Federal and state law requires that students in special education receive transition services to help them plan and prepare for life after graduation. “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. These services may be the most important part of a student's special education program.

At age 14, or in eighth grade, whichever comes first, the student must begin to plan for high school and beyond. Ideally, planning should begin in the spring of seventh grade. At that 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. Transition services must be based on the student's needs, taking into account the student's individual preferences, strengths and interests. Services include:

- Instruction,
- Related services,
- Community experiences,
- Job sampling that relate to their interests and skills, and
- Post-school living and employment goals and, when appropriate, living skills and vocational evaluation.

The [transition services plan](#) must be individualized and relate directly to the student's goals beyond high school and show how planned studies/training and job sampling will achieve these goals. The IEP includes a section for stated transition goals and how progress will be measured. This section should be filled out in detail with requirements for specific measurements of progress that include demonstrated mastery of specific skills the student will need after high school that align to their individualized needs and goals. The case manager must provide information about services delivered through other state agencies and, if needed, arrange for parents and/or students to talk to representatives of relevant agencies. [See the New Jersey Department of Education model IEP form.](#)

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 filled out at the beginning of eighth 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 or just after the winter break of eighth grade. The guidance office forwards applications to the vocational school. Vocational schools notify students by

February whether they have been accepted. Some counties have two-year vocational programs. Students should submit an application for these programs at the beginning of tenth grade for possible acceptance in 11th grade.

There are separate vocational programs for students with disabilities. Most vocational schools also offer shared-time programs in which students split the school day between their local high school and the vocational school.

Preparation for College

Students wishing to attend college should receive an appropriate curriculum and training to prepare them for the academic requirements of college. This should include preparing students for the basic skills test that most colleges require students to pass before they can take college-level classes. Transition services may also address other skills that students will need in college such as organization, self-advocacy, social skills and academic experiences offered at local community colleges. Students with a New Jersey high school diploma may always attend the local community college.

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 at 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 the IEP goals regarding life skills before high school graduation. As with other IEP goals, life skills goals should be measurable and specific, such as identifying a task or ability that the student will master during a school year (e.g., preparing meals, toileting, taking public transportation), specifying which skills the students will be expected to do independently.

Turning 18

Students have the legal right to make their own educational decisions upon their 18th birthday. Three years prior to the 18th birthday, the case manager must inform both the student and parents of this transfer of rights to the student. Adult students must send a written notice to the CST, superintendent and school principal if they want their parents to continue to sign parent consents on their behalf. In any event, parents must still receive all notices, invitations to meetings and copies of school records unless the student becomes emancipated according to New Jersey laws.

At times, parents may believe their child cannot make important decisions due to a disability, and a less restrictive way of caring for an adult child is not available. Then, parents may file a complaint seeking a court order for guardianship with a county

surrogate's office. It can take several months to obtain guardianship and it is a complicated process, so it is recommended to start this process when the child turns 17. For more information, including alternatives to guardianship for students, parents should contact an attorney. Information regarding guardianship and alternatives is available through the New Jersey Department of Education, through each county's surrogate office. Read the New Jersey Department of Education's brochure, [Preparing for the Age of Majority: Supported Decision-Making and Other Support](#).

Services/Accommodations Through 504 Plans

The federal law, Section 504 of the Rehabilitation Act, protects the rights of individuals with disabilities. This law prevents discrimination against persons with disabilities by any entity and institution that receives federal funds, such as public schools and universities. This law states that students who have "a physical or mental impairment which substantially limits one or more major life activities, have a record of such impairment or are regarded as having such impairment" are entitled to reasonable accommodations and supports for the same opportunity to learn as their peers. They must also be provided with the same opportunities for non-academic and extra-curricular activities. It is intended for students who can learn in a general education setting with the appropriate and reasonable school-based services. Because it prevents schools from discriminating against students on the basis of their disabilities, it also applies to students who are in special education.

"Impairments" under this law include ADHD, reading disabilities, severe anxiety, depression, 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 and evaluations should be performed to figure out why the student is having 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 written notice 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 student's 504 plan must be in writing and must state all the necessary accommodations, supports and services that will be provided so the student can learn. Services can include the same therapies, supports and accommodations that are available through an IEP such as instruction in a small class setting, an aide and

assistive technology. An annual meeting must be conducted to review and potentially 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. One difference between an IEP and a 504 plan is that parents must pay for independent evaluations.

Intervention and Referral Services

Starting in kindergarten, school districts must offer intervention and referral services (IR&S) through a written IR&S plan to all students who are having learning, behavioral, social, emotional, attendance or health difficulties in school and who require a more structured plan to address their needs. Students may but do not have to be in special education or have a 504 plan to receive these services.

While schools should provide IR&S services to all students they identify as needing these services, students do not have to try these services first. There should be no delay in the CST evaluation process if a disability is suspected that may require special education or services under a 504 plan.

Other Important Education Rights for Students with Disabilities

Equal Participation in School to the Extent Possible

Students with disabilities have the right to the same school year and school day as students in regular education programs. Classrooms and materials should 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.

Meeting New Jersey's Education Standards

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

Earning a High School Diploma

Students with disabilities have the right to earn a high school diploma by meeting state requirements or by meeting specially developed IEP requirements. They must be given the opportunity to achieve high school credits in a variety of way such as: through credit recovery, flexible schedules, work/study, independent study, community college and vocational programs.

School Discipline Rights

School discipline is a complex subject. In general, all students must abide by the

school code of conduct. However, students who have an IEP or 504 plan and do not comply with school rules have the right to have their disabilities considered before a disciplinary action or negative consequence is imposed. While consequences for violating school rules are allowed, schools must also try to improve behaviors through positive supports and strategies.

If a parent/caregiver has a concern about a child's discipline or behavior issues, they should consider consulting with an attorney or advocate to discuss how to appeal or challenge a school decision. See the [Resources in the appendix](#) for more information about discipline rights and how to obtain assistance.

Attendance

When a student's disability affects attendance, IEP or 504 plan modifications and IR&S may be needed. A student's excessive absences could be "School Refusal," a condition that is often associated with or the result of recognized psychiatric disorders and must be based upon opinions/reports of treating physicians, therapists and school staff. Parents should communicate the suspected reasons for attendance issues in writing to the CST and principal. Parents should also consider sharing relevant doctor report, recommendations and provide necessary releases for community-based therapists to collaborate with school staff.

The appropriate school staff should work the student and family until the attendance issues are resolved through a plan, including effective supports such as school counseling, mentoring, phone calls and/or home visits from school staff, behavioral goals and academic supports, home instruction for all or part of the school day, or placement in an out-of-district program.

Harassment, Intimidation and Bullying (HIB)

School laws include procedures for investigating HIB, how school administrators determine whether HIB occurred and how to respond to HIB incidents. Children with disabilities are involved in HIB incidents, whether as the bully or victim, at a higher rate than children from other groups. It is necessary to understand the HIB laws and procedures to advocate effectively for a child. For more information, see ACNJ's Harassment, Intimidation and Bullying fact sheet.

Disability-Related Services 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](#) in the appendix for more information.

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. They 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 of the programs. Individuals between 18 and 21 years old must register with The New Jersey Department of Human Services, Division of Developmental Disabilities (DDD). If DDD decides that the individual is eligible, services will be provided by CSOC. There is no cost.

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

These services are for individuals over 21 years old who have a developmental disability. A developmental disability is defined as a developmental or intellectual disability that is permanent and is identified before the individual turns 22 years old. Individuals between the ages of 18 and 21 must also register for services with DDD. These services include community services, home services, residential services outside the home and support services to the family. Individual may also receive 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 other programs. These programs are free for eligible individuals.

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

Individuals may be eligible for DVRS services if the division decides 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 two 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. There are no costs for these services.

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. See [Resources](#) for more information.

Parent Participation Rights and Written Notice

Parent participation rights includes:

- attending school meetings to discuss important changes to their child's education program, or concerns about the program or problems in school,
- receiving written notices and letters in a language that parents can understand concerning all school issues and translation services,
- receiving answers to their questions regarding their child's education,
- having the ability to have input, including private evaluations reports, considered in developing an education program, and
- appealing the CST's decisions by requesting state mediation and/or filing a complaint (a Petition for Due Process) with the New Jersey Department of Education.

To ensure their input and requests are considered, parents should always:

- Communicate every request and concern in writing through email and/or mail,
 - Check district policies about communications on the school website or request a written copy of the policies from school principal or the Board of Education
- Keep copies of all communications to and from the school, and
- Attend school meetings in person or through alternate means.

Rules Regarding Written Notice

The school district must provide parents with written notice 15 calendar days prior to any action concerning the identification, classification, evaluation or educational placement of the student. The written notice must include a description of the options the school district considered and the reasons why some options were rejected. Additionally, it must include a description of parental rights, procedures for exercising those rights and the names of organizations that assist parents in understanding and exercising their Due Process rights. All notices given by the school district to the parent must be in the parent's native language, unless clearly not possible.

Unless a parent provides written consent authorizing the proposed changes to the student's IEP, the IEP team, including parents, must meet to discuss the proposed changes to the student's IEP before making such changes. The meeting must be scheduled at a mutually agreeable date and time and parents must be given sufficient notice to ensure they will have an opportunity to attend. If unable to attend the meeting in person, parents must be given the opportunity to participate in the meeting by phone or video conference.

When a parent wants an IEP meeting, wants to change the IEP or if there is any disagreement with an evaluation or a proposed IEP, the parent must provide the school district with **written** notices and/or **written** requests. These written notices or requests should always be addressed to the student's case manager and 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 calendar days of receipt of the request. When a parent's request necessitates an IEP meeting, the meeting must be scheduled within 20 calendar days. These time limits exclude holidays but not summer vacation.

Challenging School District Decisions Regarding Special Education and 504 Rights

If the parents cannot reach an agreement with the district regarding a proposed IEP or 504 plan within 15 calendar days, they may file a Due Process Petition and/or file for Mediation. If the parents do not file, the school district can take the proposed action without parental consent. Parents can also file a Due Process Petition and/or for Mediation after the 15 calendar days have passed and at any time of the calendar year to revise an IEP that has gone into effect.

When informal negotiations fail, there are certain steps parents can take prior to filing for Mediation or Due Process. One option is for parents to request a Facilitated IEP meeting through the NJDOE. These IEP meetings are conducted with the help of

trained facilitators to promote a collaborative IEP process and to help ensure the appropriate procedures are followed.

Another option is for parents to write to their county's Supervisor of Child Study to explain a concern. The County Supervisor of Child Study may be able to help resolve the dispute. A third option is to contact the Special Education Ombudsman at the NJDOE who can provide information and assistance. (see contact information [page 33](#) of this Guide). The ombudsman works neutrally and objectively with all parties to ensure that proper education procedures are followed in a fair manner and helps the parties resolve a dispute.

Mediation and Due Process

An Overview

Parents who wish to challenge their district's decisions through Mediation or the Administrative Court process must use specific procedures under New Jersey's education laws. These procedures are summarized in this section.

Federal and state laws protect parents' rights to disagree with their school districts and provides procedures to exercise those rights. These rights are called "Due Process rights." Either a parent or a school district can request a Due Process hearing when seeking to challenge the decisions or action or inaction of the other. A school district **MUST** request a Due Process hearing within 20 days of a parent's written request for an independent outside evaluation if the district is denying the request. A parent may wish to obtain legal advice before requesting mediation or a Due Process hearing.

Requests for a Due Process hearing and/or mediation are sent to opposing party and the Office of Special Education Programs (OSEP) at the New Jersey Department of Education (via email through their website or by mail). This request, known as the "petition," is the complaint that commences the litigation process with school districts. Once a request for a Due Process hearing is received, OSEP must acknowledge receipt of the request, provide the parent with information about free and low-cost legal services and offer the parties mediation (if they haven't already requested it) prior to a hearing. The district must respond to the petition within ten days unless the district previously notified the parent regarding the reasons for its position. When a district files a petition, the parent must also send a written response within ten days that addresses the statements made by the district.

Parents can also request an expedited Due Process hearing for discipline matters. In this case, a mediation would be scheduled within seven calendar days of the request and

would be transmitted for a hearing by the 15th calendar day of the request if not resolved.

When parents file the petition, their district is given an opportunity to conduct a “resolution” meeting to resolve any conflict informally within 15 days of receiving the parents’ Due Process request. This resolution meeting is similar to an IEP meeting and must include the parents, members of the IEP team who have knowledge of the facts in the request and a representative of the district who has the authority to make decisions on behalf of the district (often the Director of Special Education). The district may not have its attorney present at the resolution meeting unless the parent is accompanied by an attorney. Alternatively, the parent and district may agree to waive the resolution meeting and go to mediation conducted by a mediator from OSEP or proceed to a hearing.

The Right to Maintain the Status Quo “Stay-Put” Pending Mediation/Due Process

Once state mediation or a Due Process hearing is requested, no changes can be made to the student’s classification, IEP or placement until the dispute is resolved unless both parties agree. This is commonly referred to as the “stay-put” effect of seeking Due Process. Parents who seek stay-put should specifically request “stay-put” in their Due Process complaint.

Time Limits for Requesting Relief Through Mediation/Due Process

A parent or district must request a Due Process hearing within two years of the date the parent or district knew or reasonably should have known about the issue forming the basis of the dispute.

Mediation

A parent or school district may request mediation at the same time as filing for a Due Process hearing or request mediation only. Either party can refuse to participate in a mediation and, in this case, either the parent or school district must file a request for a Due Process hearing to continue the case. Mediation is less formal than a Due Process hearing. Trained, impartial mediators from OSEP conduct mediation. Mediations must be scheduled within 15 calendar days from the request. The mediator does not decide the case and cannot force an agreement. All statements made during the mediation are for settlement purposes only and are not recorded and cannot be used against either party at a hearing. The mediator helps the parties define the legal and factual issues and, if possible, come to an agreement.

If the parties reach an agreement, the mediator will write up the agreement and both parties will sign it and receive copies. Both parties must comply with this signed

agreement and the mediation agreement may be enforced through a Due Process petition if one of the parties violates the agreement. The mediation process can take no longer than 30 days of the request unless both parties agree to extend the time. If mediation fails, the mediator refers (“transmits”) the case for a Due Process hearing at the Office of Administrative Law (OAL), the court that decides special education disputes, unless the petition is withdrawn.

The Due Process Hearing

When a case is transmitted to the OAL, an administrative law judge is assigned to the case for the purposes of presiding over a settlement conference. The parties will receive a notice regarding scheduling the settlement conference. Parties cannot be forced to enter a settlement agreement. If the parties cannot reach a settlement agreement, the case is referred to another administrative law judge for the 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, including expert opinion reports, testimony and legal arguments in support of their positions. After hearing the evidence and arguments, the judge must make a final written decision within 45 days after the resolution period is over. 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.

Emergency Relief Hearing

If a parent requests a Due Process hearing and the child is suffering serious harm while waiting for the hearing, the parent may also request emergency relief. Emergency relief is appropriate for the following “serious harms:”

1. When there is a break in the services that a child is supposed to be getting under the IEP, such as when a child is excluded from a school bus, preventing the child from attending school.
2. When a child is suspended for conduct related to the child’s 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 or if the requested relief is not granted.

Complaint Investigations

A parent may file a complaint with the New Jersey Department of Education to request that it investigate a district for violating federal or state special education laws and request a corrective action plan. The complaint must include specific facts of the alleged violations. The New Jersey Department of Education must investigate and provide written findings and conclusions within 60 days of the receipt of the complaint. If the school is found to have violated the laws, a corrective action plan is sent to the district and parent.

For more information, instructions and forms for a Mediation/Due Process/Complaint Investigation, visit www.nj.gov/education/specialed/

Appendix

Glossary of Terms

Case Manager – A 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 five, 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 three 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, and the related 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 Child Study Team Evaluations – The first time the CST evaluates the student to determine eligibility to receive special education services.

Independent Evaluations – Evaluations conducted at the district’s expense by a professional not employed by the district pursuant to a written request by the parent. The parent and district must agree upon who will conduct the evaluations and any conditions.

Learning Disabilities Teacher Consultant (LDTC) – A member of the CST who tests and evaluates a student’s achieved knowledge and academic learning and determines the nature of the student’s academic disability. This can be the case manager.

Least Restrictive Environment (LRE) – Students with disabilities should be educated within the general 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 general education classroom.

Parent Evaluations – Evaluations conducted by private physicians or therapists paid for by the parent.

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. This 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.

Transition Plan – The part of the IEP that will prepare a student for life after high school that includes services, curriculum and training with specific individualized goals, including ways to measure progress objectively.

Sample letter to Director of Special Services to request an initial evaluation:

Parent Name: _____
Parent Address: _____
Parent Phone Number: _____
Parent Email: _____
Date: _____

To: Child Study Team/Case Manager (Name)
Name of School: _____
Address: _____

Dear Child Study Team/Case Manager (Name):

I am writing to request that my child, _____ (name of child) _____, 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 and I suspect my child has a disability.

I understand that I will hear from you within 20 calendar days of your receipt of this letter. Please contact me to propose 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 to request an IEP meeting

Parent Name: _____
Parent Address: _____
Parent Phone Number: _____
Parent Email: _____
Date: _____

To: Child Study Team/Case Manager (Name)
Name of School: _____
Address: _____

Dear Child Study Team/Case Manager (Name):

I am requesting an IEP meeting concerning my child, (name of child), who is a student at (school name) School in the grade. I am writing because I have concerns about my child’s progress and the IEP and wish to discuss potential amendments and whether additional evaluations are necessary.

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 propose 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 director of special services, the principal of your child’s school and your child’s teacher.**

Sample letter to Case Manager to request an independent evaluation

Parent Name: _____
Parent Address: _____
Parent Phone Number: _____
Parent Email: _____
Date: _____

To: Child Study Team/Case Manager (Name)
Name of School: _____
Address: _____

Dear Child Study Team/Case Manager (Name):

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.)

Please provide me with a list of independent evaluators. Shall I contact them for the independent evaluations or will you make the arrangements? I understand that the school district has 20 calendar days to consent or file for Due Process. 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 to request a re-evaluation

Parent Name: _____
Parent Address: _____
Parent Phone Number: _____
Parent Email: _____
Date: _____

To: Child Study Team/Case Manager (Name)
Name of School: _____
Address: _____

Dear Child Study Team/Case Manager (Name):

It has been nearly three 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 child study team re-evaluation 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 a copy of this letter to the director of special services, the principal of your child's school 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.nj.gov/education or 609-376-3500

For information about all education questions, mediation/Due Process hearings, including forms, resources and contact information for county education offices.

New Jersey Department of Education, Facilitated Individualized Education Program

www.nj.gov/education/specialed/iep/facilitated/

For information and for forms to request a facilitated IEP meeting.

New Jersey Department of Education, Special Education Ombudsman

specedombudsman@doe.state.nj.us or 609-376-9060

For information and assistance with special education rights.

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

www.nj.gov/dcf/about/divisions/dcsc/ 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 and their families. CSOC contracts with PerformCare to link children and their families with services through local county offices (CMO services).

New Jersey Department of Children and Families, Family Support Organizations

www.nj.gov/dcf/families/support/support/ or 877-652-7624

For family-run, county-based direct peer support, education, advocacy and other services for family members of children with emotional and behavioral problems.

New Jersey Department of Health, Family Health Services (Early Intervention System) www.state.nj.us/health/fhs/eis or 888-653-4463

For information and for referrals to regional offices that provide evaluations and early intervention services for families with children from birth to three years.

New Jersey Department of Human Services, Division of Developmental Disabilities

(DDD) www.nj.gov/humanservices/ddd/ 800-832-9173 (toll-free) or 609-633-1482

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.nj.gov/humanservices/dds/ or 888-285-3036 (Office Hours: M-F 9:00 am – 5:00 pm)

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)

<https://www.nj.gov/labor/career-services/special-services/individuals-with-disabilities/> or 866-871-7876 (toll free) or 609-292-5987

For registration for vocational services and for information and resources and to locate county office contacts.

Disability Rights New Jersey

<https://disabilityrightsny.org/> or 800-922-7233 (in NJ only) or 609-292-9742 (Voice).

The Arc of New Jersey

<https://www.arcnj.org/> or to speak with someone directly, call 732-828-2022.

Locate county office contacts at https://www.arcnj.org/about/local_chapters.html.

Resources

NJDOE resources:

Sample Special Education Forms, including Sample IEP

<https://www.nj.gov/education/specialed/form/>

Student Learning Standards

<https://www.nj.gov/education/code/current/title6a/chap8.pdf>

<https://www.nj.gov/education/cccs/>

Discipline and Conduct

<https://www.nj.gov/education/code/current/title6a/chap16.pdf>

Transition Resources

<https://www.nj.gov/education/specialed/transition/>

Guardianship and Alternatives to Guardianship

<https://www.nj.gov/education/specialed/transition/GuardianshipBrochure2.pdf>

Go to www.acnj.org for fact sheets, guides and blogs regarding new topics of interest.



Advocates for Children of New Jersey is the trusted, independent voice putting children’s needs first for more than 40 years. Our work results in better laws and policies, more effective funding and stronger services for children and families. And it means that more children are given the chance to grow up safe, healthy and educated.

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