Pennsylvania

Parent Guide to Special Education

for School-Age Children

INTRODUCTION

Parents are very important participants in the special education process.

Parents know their child better than anyone else and have valuable information to contribute about the kinds of programs and services that are needed for their child's success in school. To ensure the rights of children with a disability, additional laws have been enacted. In this guide we use the terms "rules" and "regulations." This booklet has been written to explain these rules so parents will feel comfortable and can better participate in the educational decision-making process for their child. The chapters that follow address questions that parents may have about special education, relating to their child who is thought to have, or may have, a disability.

Chapter One focuses on how a child's need for special education is determined. In this chapter, the evaluation and decision-making processes are discussed, as well as the members of the team who conduct the tests and make the decisions regarding a child's eligibility for special education programs and services.

Chapter Two explains how a special education program (that is, an Individualized Education Program) is developed and the kinds of information it must include. This chapter describes how appropriate services are determined, as well as the notice that a school district must give to parents summarizing a child's special education program. Planning for the transition from school to adult living is also discussed.

Chapter Three deals with the responsibilities that a school district has to a child who is eligible for special education services and the child's parents. The school district has specific responsibilities related to confidentiality of educational records, quality of materials and classrooms, and discipline procedures.

Chapter Four outlines the options parents have if they disagree with school personnel about their child's education program. These actions include team meetings with school officials, mediation, resolution sessions, special education hearings, and seeking assistance from the Pennsylvania Department of Education.

The Appendix provides a list of resources where parents can obtain help or have their questions answered.

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CHAPTER 1

Does My Child Need Special Education?

Determining Eligibility

As a parent, you are uniquely qualified to know your child's learning strengths and weaknesses. If it is determined that your child is eligible for special education services, school professionals will utilize your knowledge in designing a special education program for your child's benefit. Your child may be eligible for special education if your child:

1) Has an intellectual disability, emotional disturbance, an orthopedic impairment, a hearing impairment, deafness, a speech or language impairment, a visual impairment (including blindness), autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities **and**
2) Needs special education, as determined by an evaluation team.

Your child must meet both qualifications in order to be eligible for special education. In Pennsylvania, all children eligible for special education have the right to a free, appropriate, public education (FAPE).

NOTE: Children with disabilities who are not eligible for special education may qualify for accommodations in the general classroom under Section 504 of the Rehabilitation Act of 1973. Chapter 15 regulations apply for these students. Chapter 14 regulations apply to those students who qualify for special education services by meeting the two-part criteria listed above.

Signs of Physical, Sensory, Intellectual, or Emotional Disability

Some indications that your child may have a disability that meets the first part of the two-part criteria are:

- Consistent problems in getting along with others
- Difficulty communicating
- Lack of interest or ability in age-appropriate activities
- Resistance to change
- Difficulty seeing or hearing that interferes with the ability to communicate
- Health problems that affect educational performance, including attention problems
- Difficulty performing tasks that require reading, writing, or mathematics
- Chronic behavior or social problems that affect your child's ability to learn

Your child may need specially-designed instruction to make progress in school. This need for special education is the second part of the two-part criteria to be eligible for special education services.

Screening

Your child's school has a screening process in place that identifies students who **may** need special education. This process may or may not lead to an initial evaluation for special education and should include:

- A review of the student's records, including attendance and report cards
- A review of the student's vision and hearing
- Assessments at reasonable intervals to determine a student's performance based on grade-appropriate standards in core academic subjects
- A systematic observation of the student's behavior in the classroom or area in which the student is displaying difficulty

You may request an initial evaluation at any time, without going through these screening activities.

The Evaluation Process

The evaluation team gathers the information that will be used to determine if your child needs special education and, if so, the types of programs and services needed. Your child may be evaluated by a school psychologist. Other evaluations may include tests by a hearing specialist for a child with a hearing problem, or an evaluation from a doctor for a child with

a health concern. The evaluation must also include input from a certified professional if certain services, called "related services," may be needed. An example is speech therapy (for speech and language) or occupational therapy (for fine motor and other skills).

A child may be referred for the first (or initial) evaluation in different ways:

- **You may ask your school to evaluate your child for special education at any time**. This can be done by sending a letter to the principal of your child's school or by asking a school professional employee. It is recommended that you keep a record of your written or verbal request. A *Permission to Evaluate–Evaluation Request* form should be sent to you within 10 calendar days after the receipt of your request.

OR

- **The school may contact you to request permission to have your child evaluated.** You must consent in writing to your child's evaluation. School officials cannot proceed without your written permission. If permission is not received and the school continues to find that an evaluation is necessary, they may ask for a due process hearing to get approval from an impartial hearing officer to evaluate your child. More information about due process hearings is found in Chapter 4 of this guide.

To give permission for the evaluation process to begin, you must sign the *Permission to Evaluate-Consent* form given to you by your local educational agency (LEA). The entire evaluation process must be completed within 60 calendar days (not including summer vacation) from the date your permission is received by the LEA. If your child is eligible for special education, the ER and a summary must be given to you at least 10 school days before a meeting is held to discuss your child's *Individualized Education Program* (IEP). A parent may not feel the 10 days are necessary and must put in writing to the school that the meeting may be held sooner than 10 days. Either way, you will be invited to the meeting.

The types of tests used in the evaluation process depend upon the educational needs of your child. In most cases, your child may be given several tests to help find strengths and needs. Someone other than your child's general classroom teacher may also observe your child in class. Part of the evaluation includes gathering input from parents about their child. **Information that you share about your child is very important and must also be included in the evaluation.**

What the Evaluation Will Tell You

The evaluation will include information about your child's skills, strengths, and needs. All evaluations and

reevaluations (which are evaluations done at 2- or 3-year intervals after the initial evaluation) must include a review of the testing and assessments that were conducted, information from the parents, classroom observations, and the observations of teachers and related service personnel.

The evaluation or reevaluation must also tell you what additions or changes are needed to help your child meet the goals in your child's educational program described in your child's *Individualized Education Program* (IEP), and to take part in and progress in the general curriculum (the skills and knowledge taught in a specific LEA).

An evaluation team reviews all materials and writes a report called an *Evaluation Report* (ER) that states if your child has a disability and if your child needs special education. It makes recommendations about the types of services your child needs. The ER may state that your child is not eligible and does not need special education services. You will receive a copy of the ER and a written notice stating that you have the right to disagree and may request an independent educational evaluation (IEE) or request a due process hearing. A copy of the ER and a summary of the findings must be given to you.

If your child is being evaluated for a specific learning disability, parents (as members of the evaluation group) will be given an opportunity to agree or disagree with the results of the ER. Next to your name, you will indicate whether or not you agree with the report. If you do not agree, you may give the team your opinion in writing, on the parts of the report where you disagree. This is sometimes called a "dissenting opinion," which will become part of the final ER. A copy of the final ER must be given to the parents.

Independent Educational Evaluations (IEE)

You may also get evaluation reports from professionals outside the school system and send them to your child's school. Examples of these professionals may include a psychologist or therapist. The LEA can provide you with information about where an independent evaluation can be obtained. The results of these outside evaluations will be considered in determining if your child has a disability and needs special education. If you wish for the LEA to pay for an outside or independent educational evaluation, you first must disagree with the evaluation conducted by the LEA. The LEA then must initiate a special education due process hearing to show that its evaluation is appropriate.

Allowing for Differences in English Language Skills and Ethnic Background

Evaluations and reevaluations must take into account the child's English language skills and ethnic background so that the testing and evaluation will be fair for children of different races and cultures. Tests must be given in the language or form that is most likely to give accurate information, unless it is clearly not feasible to do so. Evaluations must also take into account the child's disability to be sure the results are reliable. For example, a child with a severe visual impairment should not be given a written test with small print.

The Reevaluation Process

A reevaluation is conducted at least every three years. If, however, your child has been diagnosed with an intellectual disability, a reevaluation is required every two years. A reevaluation is done to determine whether your child still has a disability and needs to continue receiving special education. When additional information is needed to complete a reevaluation, the school must receive your permission to perform the additional evaluation using the *Permission to Reevaluate-Consent* form.

If the LEA has made what it believes are "reasonable attempts" to receive your permission, but failed to get a response, it may proceed with the reevaluation. Each LEA decides what "reasonable attempts" are. Such attempts may consist of:

- Telephone calls,
- Registered letters with return receipts required,
- Visits to the home or parents' place of business.

Also, if the school determines that no additional data is needed, they will notify you of this determination.

You may agree in writing to your LEA's recommendation that the three-year reevaluation is not necessary. If the LEA proposes to not conduct the reevaluation, they will issue you an *Agreement to Waive Reevaluation* form. This is not an option if your child has an intellectual disability.

CHAPTER 2

How Is My Child's Special Education Program Determined?

Special Education

Under Pennsylvania and federal law, a child with a disability has a right to special education and related services that are provided:

- Under public supervision and direction.
- Without charge (at public expense) to preschool (ages 3-5), elementary, or secondary school students.
- In the Least Restrictive Environment (LRE). This means that children with disabilities are educated to the maximum extent appropriate with children who do not have disabilities, in the general education class.
- In conformity with an *Individualized Education Program* (IEP). This means that students with disabilities who need special education must receive a free appropriate public education (FAPE).

FAPE includes other (related) services that help your child get to school and benefit from the special education program. These may include:

- Special transportation,
- Speech, physical, or occupational therapy,
- Psychological counseling,
- Other services which help or support your child as your child grows and learns.

Your Child's Individualized Education Program (IEP)

The IEP team (which includes your child's teachers, administrators, related service providers, and **you**) writes the IEP. This program will be developed at an IEP meeting and will include a description of all the programs and services necessary to help your child make progress in school. The IEP team uses information that is contained in the Evaluation Report (ER), or reevaluations, to write the IEP.

As a parent, you are an IEP team member. It is important that you attend IEP team meetings. IEP meetings will be scheduled to fit your schedule and school officials' schedules. You will get a written notice of when,

where, and why the meeting will be held and a list of the other people who are invited to attend the meeting. The IEP meeting is to be scheduled at a time and place that is good for you and your LEA. If the date or time is not convenient, you may ask for a change. You may also participate by telephone or other electronic means if it is impossible for you to attend the meeting in person.

Required members of each IEP team are:

- The child's parent(s) or legal guardian
- At least one of your child's general education teachers (if your child attends, or might attend, general education classes)
- At least one special education teacher
- A representative of the LEA who:
  - Is qualified to provide or supervise special education programs
  - Knows about the general education curriculum
  - Knows about the availability of the resources the LEA can offer
- Someone who can explain the evaluation results, who may already be a member of the team
- Other people who know your child well or who have worked with your child (You may invite an advocate to advise you, or anyone else who will be able to add information about your child's educational experience. This may be a professional advocate, a family member, a close family friend, a previous teacher, etc.).
- Your child at age 14, when planning will be done for life after graduation, or any time before age 14 when you want your child to be part of the team, and it is appropriate.
- A representative from a career and technical school if a career/technical program is being considered for your child.

A team member may fill more than one of the above roles. In most cases, there will be at least four people at the IEP meeting: you, the LEA representative, a special education teacher, and a general education teacher (if your child will participate at all in general education). The general education teacher may not attend all meetings or stay for the entire meeting time, but must be a team member. Mandated members of the IEP team may be excused from the meeting if you and the LEA agree in writing. If a member is excused and his/her subject area or speciality is being discussed, he/she must provide written input before the meeting.

If you choose not to attend the IEP meeting, it may be held without you.

IEP Timelines

The IEP must be completed within 30 calendar days after the evaluation team issues its Evaluation Report. The IEP must be put into action as soon as possible, but no later than 10 school days after the IEP is approved.

Your child's program is reviewed every year at an IEP meeting, or more often if requested by you or any other IEP team member. Whenever there are concerns about or changes to the IEP, a meeting may be requested by you or any other member of the IEP team. You and the LEA may agree not to have an IEP meeting to make changes to an IEP. Instead, you and the LEA may develop a written document to modify the current IEP. If changes are made without a meeting, you must be provided with a copy of the revised IEP.

IEP Contents

The IEP team will review all the evaluation material and will determine how your child is currently performing in school. The IEP team will write measurable, annual goals that are designed to meet the needs of your child.

The IEP team will determine:

- The types of special education supports and services to be provided to your child that will be used to meet the individual needs of your child.
- Where, what kind, how much, and how often special education and related services will be provided. For example, the IEP may specify, "individual speech therapy, 30-minute periods, three times per week, in the speech room." Special transportation, which is different from the mode of transportation utilized by other children in the neighborhood, also falls under this category. For example, the IEP may specify, "a bus that will lift a wheelchair from the curb, taking Jimmy from his home to school with a ride no longer than 30 minutes."
- The date services and programs will begin and how long they will last.
- The tests or other methods of evaluation that will be used to measure whether your child is meeting the annual goals and how and when this progress will be reported to you. Progress on meeting annual goals must be reported periodically, at least as often as in general education.
- The amount of time your child will spend inside the general classroom and how much, if any, your child will not participate in the general class or in the general education curriculum.
- The accommodations and modifications and supplementary aids and services in the general education setting, if any, needed for your child to succeed in a general education class. This could include, for example, giving your child untimed tests or having someone help your child take class notes.

- The accommodations needed, if any, for your child to participate in statewide or districtwide tests. If your child is not able to participate, even with accommodations, another assessment will be done that will show your child's skills. Participation in this alternate assessment will be documented in the IEP.
- Supports that school personnel may need to implement the IEP, such as resource materials, training, or equipment.

In developing the IEP, the team must consider:

- The parents' concerns and input
- Whether a child exhibits behavior that interferes with the child's learning or the learning of others, and therefore needs a behavior management plan or supports
- The needs of children with limited English language skills
- The use of Braille for children with visual problems
- The communication needs of students, including students who are deaf or hard of hearing
- Whether the child needs assistive technology devices or services to communicate or participate in the activities at school

When a child requires additional time beyond the school year to benefit from the special education program described in the IEP, extended school year (ESY) services may be necessary. In some cases, for example, interruptions in the school schedule, such as summer break, will result in children with disabilities losing many of their basic skills and taking a long time to get those skills back once school begins again. ESY services are to be provided during breaks in the educational schedule to prevent this loss as part of a free appropriate public education. At each IEP meeting, the team will determine if the child is eligible for ESY. If found eligible, a description of ESY services will be included in the IEP.

Secondary Transition Planning

As your child gets older, the IEP team will design a program to help your child prepare for life when your child completes high school. This is called secondary transition planning because planning is done through the IEP to facilitate the transition from school to college (or postsecondary education), work, living independently, or other activities in which the young adult may be involved. Your child will learn the skills needed in the future while your child is still in school.

Planning for the transition from school to adult living must begin when your child turns 14, or sooner if the IEP team thinks early planning would be appropriate. The IEP team (including your child, when your child turns 14) must discuss your child's post-school plans and goals. These plans must include the kind of education or training your child will

receive, the kind of job your child might have, where your child will live, and how your child will spend time in the community. Community agencies, like the Office for Vocational Rehabilitation, are often involved in this planning to give your child the most opportunities to be successful after high school.

Educational Setting

The law requires that children with disabilities be placed in educational settings that will give them as many opportunities as appropriate to be with students who are not disabled. This is called placing the student in the Least Restrictive Environment (LRE).

The special education program will be developed completely before the IEP team decides where the child's program will be provided. The IEP team will consider supports and services to determine how the program can be delivered in the LRE. By law, the first place the IEP team must consider is the general classroom in the neighborhood school your child would attend if your child did not have a disability (or where his or her siblings would attend).

The Appropriate Services

The services chosen for your child will depend upon the amount and type of special instruction or support your child needs. A special education teacher may be able to give instruction in the general classroom. An example of this is "co-teaching," where a general and a special education teacher team teach in the same class.

For some children, placement outside of a general education class for some of the day is necessary. Students who receive most of their instruction in basic academic subjects outside of a general education setting will still have opportunities to participate in other activities in school with general education students. These opportunities might include participation in subjects such as art or music, belonging to a general homeroom, socializing in the lunchroom, and attending assemblies and other enrichment programs with their nondisabled peers.

Each IEP must include a description of the types of support the child needs. Your child may receive more than one type of support, and the type should not be based on the child's disability alone.

- Learning support – for children whose greatest need of support is in the areas of reading, writing, math, or speaking or listening related to academics.
- Emotional support – for children whose greatest need is for social, emotional, and behavioral help.

- Life skills support – for children whose greatest need is to learn academic, functional, or vocational skills that will enable them to live and work independently.
- Blind and visually impaired support – for children who require services related to visual impairment or blindness. The IEP for these students must address the extent to which Braille will be taught and used.
- Deaf and hard of hearing support – for children who require services related to deafness or hearing impairment. The IEP for these students must include a communication plan to address language and communication needs.
- Speech and language support – for children who have speech and language impairments and require services to develop communication skills.
- Physical support – for children who have a physical disability and require services in functional motor skill development.
- Autistic support – for children who require services in the areas of communication, social skills, or behavior.
- Multiple disabilities support – for children with more than one disability, the combination of which results in severe impairment, and who require services in academic, functional, or vocational skills.

The law requires that students receiving special education be placed in classes with students of the same age range. At the elementary level (grades K–6), a class cannot have children who vary in age by more than three years. At the secondary level (grades 7–12), an age range of no more than four years is allowed. An exception can be made by the IEP team for an individual child, based on the child's needs. It must be justified in the IEP.

Notice of Recommended Educational Placement/Prior Written Notice

Once you have developed the IEP with the IEP team, you will receive a *Notice of Recommended Educational Placement* (NOREP)/*Prior Written Notice* (PWN). The NOREP/PWN summarizes the school's recommendations, including the educational programs and services recommended for your child. You must indicate your approval of the IEP and educational placement in writing for your child's initial special education placement before the school may implement the IEP. There is no requirement for this notice after each subsequent IEP meeting, therefore, services will continue without your signature on the NOREP/PWN for subsequent IEPs.

CHAPTER 3

What Are the School's Responsibilities to My Child and Me?

Basic Rights for Parents

Whether you are the parent of a child with a disablity, or the parent of a child thought to have a disability, you have a right to be notified of the safeguards that serve to protect the rights of your child. This is referred to as procedural safeguards. The school must provide parents with a copy of the *Procedural Safeguards Notice* at least once each school year.

In addition, the law requires parents to be informed and issued a *Procedural Safeguards Notice*:

- At the time of an initial referral or parent request for an evaluation.
- When the school proposes to change the identification, evaluation, educational placement, or the provision of a free appropriate public education.
- When the school refuses your request to change the identification, evaluation, educational placement, or the provision of a free, appropriate, public education (FAPE).
- Which includes the procedures to maintain the privacy of your child's education records. Your child's record will be seen only by those who need to work with your child. Your LEA must show you its policy about student records and confidentiality, if requested. Detailed information on confidentiality will be described in the notice given to you on those instances listed above.

Your Child's School Records

All parents are guaranteed the right to see their child's educational records within 45 calendar days after asking for them, before any meeting regarding an IEP, or before a due process hearing. You may be charged a fee for the copying of these records. Parents are also guaranteed the right to ask for and receive an explanation of any information in the records.

The law guarantees that your child's school records be kept confidential. Only people with an educational interest in your child should see them.

Someone has an educational interest in your child if that person teaches your child or otherwise is responsible for some aspect of your child's education. Under the Family Educational Rights and Privacy Act (FERPA), records cannot be given to anyone outside the school system without your permission unless there is a legal reason for doing so. If you believe that information in your child's education records is misleading or inaccurate, your district must have a procedure for you to follow to address this issue.

Materials, Classrooms, and School Buildings

Equipment and materials may be different for children with disabilities because of their individual needs, but they should be of the same quality as the equipment and materials that are purchased for students in general education classes. Each special education class must be as close as appropriate to usual school activities, and located where noise will not interfere with instruction. Special education classes should be located only in a space that is designed for purposes of instruction, be readily accessible, and allow at least 28 square feet per student.

High School Graduation

All students receiving special education services in Pennsylvania are guaranteed the right to an opportunity to earn a high school diploma. A high school diploma will be awarded to a student who successfully completes the same courses and earns the same credits as a general education student, or who completes the special education program developed by the IEP team.

LEAs will permit students with disabilities to participate in graduation ceremonies with their graduating class, even though they may not be awarded a diploma because they will continue to receive educational services. A student who reaches the age of twenty-one (21) years during the school term and who has not graduated from high school may continue to attend the public schools in his/her district, free of charge, until the end of the school term. For instance, at age 18, your child may be a part of graduation ceremonies with his/her classmates, but still go to school until he/she is 21.

You will receive written notice (NOREP/PWN) from your child's school of the termination of special education services when school officials believe your child's IEP has been completed and your child is eligible for graduation, or nearing the end of the school year in which your child reaches the age of 21. If you disagree with the notice, you may request an informal meeting with school officials, mediation, or a special education due process hearing.

In addition, you will be provided with your child's *Summary of Academic Achievement and Functional Performance* (SAAFP). The SAAFP is a document that is provided to students and their parents at the conclusion of students' high school education. The SAAFP is intended to be a student-centered document that summarizes individual abilities, skills, needs, and limitations. Its purpose is to provide recommendations to students that will support their successful transition to adult living, learning, and working. It is designed to be a useful and relevant document to assist students in the transition from high school to higher education, training, employment, and independent living. The SAAFP may include input from various people, including the student, the parents, the special education teacher, the general education teacher, the career/technical education teacher, the transition coordinator, the school psychologist, related service personnel (such as the speech-language teacher and the occupational therapist), and agency representatives (such as the Office of Vocational Rehabilitation). A thoughtfully-completed SAAFP can provide a "bridge" that addresses the next steps necessary to complete the transition process that began in the years prior to exiting high school. It provides students and families with a clear idea of what they need to continue to do to work toward the goals students set for themselves.

Discipline for the Student Receiving Special Education Services

Behavior problems sometimes are the result of a child's disability. When behavior caused by the disability results in the violation of school rules, school officials must use appropriate discipline.

When the IEP team determines that a student's behavior is likely to disrupt learning, it must be addressed in the IEP. Programs to manage or change behavior must be designed using positive approaches to help children correct or manage their behavior. Positive approaches include recognizing and rewarding appropriate behaviors and teaching new skills so that they will replace those behaviors that are inappropriate. These approaches do not include punishing, embarrassing, or isolating your child.

Discipline must not include use of restraints, except in an emergency situation where there is a danger that the child will be harmed or will harm someone else. If restraints are used in those situations, the school must schedule an IEP team meeting within 10 school days of the incident to review the current IEP to make sure it is appropriate and is still effective. Mechanical restraints may be used only when specified by an IEP and as suggested by a qualified medical professional to control involuntary movement or lack of muscular control.

None of the following methods of punishment may be used with children:

- Corporal punishment (that is, bodily punishment)
- Punishment for behavior that is caused by the student's disability
- Locked rooms, locked boxes, or other locked structures or spaces from which the student cannot readily exit
- Noxious (that is, harmful) substances
- Withholding of basic rights, such as withholding meals, water, or fresh air
- Treatment of a demeaning nature (for example, making a student feel less important than other students)
- Electric shock
- Prone restraints (that is, the student being held face down on the floor)
- Suspension or removals from school for disciplinary reasons that form a pattern. (The following section provides additional information with regard to those removals.)

Disciplinary Exclusion

There are special regulations in Pennsylvania for excluding children receiving special education services for disciplinary reasons. Before a student is excluded from school for more than 10 school days in a row or 15 total school days in any one school year for disciplinary reasons, the IEP team must meet. *A Notice of Recommended Educational Placement* (NOREP)/*Prior Written Notice* form must be given to you and signed, because keeping a child out of school under these circumstances is considered a change in his/her educational placement. The exclusion of a child with an intellectual disability for **any** amount of time is considered a change in placement and requires all of the steps mentioned above. When a student is removed from school for more than 10 days in a year, but less than 15, these removals may be a change in placement and, if so, require prior notice to the parents for approval. This determination is done on a case-by-case basis. Factors such as the length of time of each removal, the total amount of time the child is removed, and how close the removals are to one another are used to determine if the series of removals is a change in placement. If you do not agree with the change in placement on the NOREP, your child remains in the existing placement until due process is complete (see page 21). School officials may seek a court order to exclude your child from school to override your disapproval.

If no behavioral plan is included in the IEP, a functional behavioral assessment (FBA) must be completed and a behavioral plan developed. An FBA reviews the child's

behavior where the problems are occurring and helps to determine what is happening to trigger and reinforce the inappropriate behaviors. The IEP team then outlines steps to take to reduce problem behaviors and replace them with appropriate ones. If a plan already exists, it must be reviewed and, if necessary, changed.

In addition, a review must be conducted by the IEP team to decide if your child's behavior was caused by, or is a manifestation of, your child's disability. This review is called a *Manifestation Determination*. The team must decide if the conduct in question was caused by, or had a direct relationship to, your child's disability; or if the conduct in question was the direct result of failure to implement your child's IEP. A child with a disability cannot be disciplined for behaviors that are related to, or are manifestations of, the child's disability.

In school situations where your child was involved in possession of a weapon, possession or use of illegal drugs, the sale of a controlled substance, or serious bodily injury, the Individuals with Disabilities Education Act (IDEA 2004) allows school officials to change your child's placement for no more than 45 school days, without your permission. In the new 45-day education placement (called an interim alternative educational setting), your child must be able to receive the services in the IEP and continue to demonstrate progress in the general curriculum. The new placement must also offer services to manage your child's behavior.

Due Process to Challenge Disciplinary Exclusion

If the IEP team decides that your child's behavior was **not** related to your child's disability, your child's placement may be changed for disciplinary reasons. You have the right to ask for a due process hearing to challenge this decision (see Chapter 4). During the hearing and any appeals, your child stays in the disciplinary placement until the hearing officer decides on the appeal. If the incident involved drugs, weapons, serious bodily injury, or behavior that is a danger to your child or to others, your child stays in the disciplinary placement for up to 45 school days or to the end of due process, whichever occurs first.

School officials may ask for an expedited hearing if they believe that the child is a danger to self or others in the original placement. In such case, the hearing officer must issue a decision within 30 school days.

Anytime a child is given a disciplinary removal that is a change in placement, or anytime a placement is changed for possession of weapons or drugs or serious bodily injury, school officials must still provide a free

appropriate public education (FAPE). The child's IEP team determines the services the child needs to participate in the general education curriculum and to make progress toward meeting the goals in the IEP.

The law contains certain protections for children not yet identified as "eligible for special education services" who face disciplinary procedures. If school officials had knowledge that a child has a disability, the child is entitled to the protections given to children already identified as having a disability and needing special education services. The school may have had requests from the parents for an evaluation or written expressions of concern to supervisory or administrative personnel, or teachers or other school personnel may have expressed concerns about the child's pattern of behavior or performance to the special education director or other supervisory personnel.

CHAPTER 4

What if I Disagree With School Officials About My Child's Education Program or Think My Child's Rights Are Being Denied?

The Rights of Parents

If you do not believe your child's special education program is helping your child succeed in school, you should first talk to your child's teacher. If you wish to visit your child's classroom to observe your child's program, you must follow the school's visitation policy. You can check with your school's administration office to learn more about the visitation policy. You can also request an IEP meeting to discuss changing your child's program if you think a change is necessary. The IEP team may then decide that a reevaluation is needed to gather more information about your child. Anytime school officials suggest a reevaluation of your child or your child's program, you will be invited to participate in the reevaluation process. You may request an IEP team meeting, a mediation session, or a due process hearing in order to resolve differences that you may have with school officials regarding your child's education.

If you are placing your child in a private school and are asking the school district to pay tuition for this private school because you believe your child is not receiving a free appropriate public education, you must give advance notice to school officials. This notice can be given at the IEP meeting or in writing 10 business days before you remove your child from public school. If you do not give this notice, the reimbursement to you may be reduced or denied. If the LEA gave notice of their intent to evaluate your child for special education prior to your removal of your child, reimbursement may be reduced or denied if you did not make your child available for the evaluation. Reimbursement may be reduced or denied for the private placement if a court thinks your actions have been unreasonable.

An exception to the reduction or denial of reimbursement will be made if:

- you are unable to read or write in English,
- physical or serious emotional harm to the child may result if the parent adhered to the prior notice requirements,

- the school prevented the parent from providing the notice to the school, or
- the school failed to give the parent notice of these rights and procedures.

Removing Your Child From Special Education

A parent has the right to withdraw a student with a disability from special education programs and related services. A parent must do this in writing. The LEA must issue a *Notice of Recommended Educational Placement* (NOREP)/*Prior Written Notice* to parents prior to the termination of special education and related services. All special education programs and services will cease on the eleventh day from the receipt of the parents' revocation letter. An LEA may not continue to provide special education and related services or use due process to challenge a parental decision to withdraw a student from special education programs. When a child is withdrawn from special education, the LEA is not required to remove references to special education services from the child's records.

Special Education ConsultLine

The Bureau of Special Education has established ConsultLine, a toll-free information line for your questions and concerns: 1-800-879-2301. ConsultLine is designed to assist parents and advocates of children with disabilities or children thought to have a disability. If you have questions concerning your child's special education program or the laws relating to the provision of services in your child's IEP, the special education consultants at ConsultLine may be able to assist you. You may leave a message, and a consultant will return your call within a reasonable number of business days.

Mediation

Even when parents and school officials try their best to develop and carry out an appropriate program for a child, disagreements can occur. Mediation is a free, voluntary, confidential procedure designed to help parents and school officials resolve the dispute. It is an alternative to a due process hearing. However, both you and the school must be willing to participate in a mediation session in order for it to occur. Mediation may take place at any time during or before the due process cycle. However, mediation cannot be a required process and may not serve to delay or deny a parent the right to a due process hearing.

If you and school officials agree to try mediation, the Office for Dispute Resolution will arrange for a neutral, specially-trained mediator to hold a mediation session. During mediation, the mediator will meet

with both sides to hear both points of view regarding the disagreement. The mediator may meet with both sides together and separately, to better understand each position. Neither school officials nor parents may include a lawyer at a mediation session.

The mediator will not make a decision on the disagreement. Rather, the mediator will help both parties to reach an agreement. The agreement will be put into writing and, if appropriate, it will be incorporated into the student's IEP. The mediation agreement is a legally binding document and is enforceable in a court.

You may discuss mediation with your school administrator or you may call the Office for Dispute Resolution at 1-800-222-3353. Both the *Procedural Safeguards Notice* and the Office for Dispute Resolution website (odr-pa.org) contain a form for this purpose.

The Special Education Hearing

You may request a special education due process hearing anytime you have concerns about your child's program, placement or evaluation, or the provision of a free appropriate public education. When requesting a due process hearing, you or your lawyer must make a written request to school officials and the Office for Dispute Resolution (ODR). This request must include the following information:

- The name and address of the child and the name of the school the child attends.
- A description of the problem.
- A proposed solution to the problem.

The commonwealth has developed a form for school districts to provide to parents for this purpose. This form is called a *Due Process Complaint Notice*. It is available through your school district's administrative office, the Office for Dispute Resolution website (odr-pa.org), and your *Procedural Safeguards Notice*.

Within 15 days of receiving notice of your complaint and before a hearing is held, the LEA must hold a resolution session for you and school officials to provide an opportunity to resolve your complaint, unless both you and the school agree in writing to waive (that is, not insist on) this meeting or agree to use mediation.

If your complaint has not been resolved to your satisfaction within 30 days of the school's receipt of the *Due Process Complaint Notice*, a hearing may occur before an impartial hearing officer. The hearing officer cannot work for the LEA. You may be represented by a lawyer or you may represent yourself. You may also be accompanied and advised by any individuals whom you

believe would be knowledgeable or helpful to you during the hearing. This may include the child's family member, friend, service provider, former educators, advocate, or anyone close to your child.

Each side may have witnesses and may ask questions of the other side's witnesses. Prior to the hearing date, you may ask the hearing officer to subpoena anyone from the LEA whom you believe has information important to your case. Witnesses testify under oath.

Both sides may give the hearing officer written material to consider. A list of material to be used at a hearing must be given to each side at least five business days before the hearing. Any information given to the hearing officer to consider must also be given to the LEA.

The hearing must be held at a reasonably convenient time and place for you. The hearing will be closed to the public unless you ask the hearing officer to open the hearing to the public. A transcript of what was said during the hearing will be made available upon your request.

The hearing officer will listen to both sides and then make a written decision. The decision will be mailed to you and to school officials within 45 calendar days after the receipt of your request for the hearing, unless an extension has been granted by the hearing officer.

Except in limited circumstances (see page 16 "Due Process to Challenge Disciplinary Exclusion"), when a parent requests a due process hearing, the child must remain in the child's current educational placement unless the parent and LEA agree otherwise. This is called the "stay put" rule or "pendency." If the parent's request is made at a time when there is a dispute pertaining to initial admission to public schools, the child must be placed in the public school, with the parent's consent, until due process is complete.

If you prevail in a due process hearing, it can be decided by the courts that your attorney's fees will be paid by the LEA. Parents may be ordered to pay the LEA's costs if the hearing officer decides the parent filed a complaint to harass, cause unnecessary delay, or needlessly increase costs to the LEA.

The Court Process

If you disagree with the decision of the hearing officer, you may file an appeal in court. You must file your case in commonwealth or federal court within 90 calendar days after the hearing officer's decision.

CONCLUSION

When a child has unique needs that require special education as a result of a disability, those needs are to be determined and a program to meet those needs must be designed and carried out. However, the procedures and processes involved in designing this special program and carrying it out are complicated and may seem burdensome.

Everyone involved must remain focused on meeting each child's individual needs. When parents and school officials successfully keep this objective in mind, the likelihood of providing quality educational programming dramatically increases.

Resources

The Arc of Pennsylvania

800-692-7258 https://thearcpa.org

Bureau of Special Education ConsultLine

800-879-2301

Disability Rights Network of PA (DRN)

800-692-7443 www.drnpa.org

Education Law Center

215-238-6970 www.elc-pa.org

Hispanics United for Exceptional Children (HUNE, Inc.)

(Philadelphia, Pennsylvania)

215-425-6203 www.huneinc.org

Mission Empower

855-222-3353 www.missionempower.org

Office for Dispute Resolution

800-825-0788 http://odr-pa.org

Office of Vocational Rehabilitation

800-442-6351 https://tinyurl.com/PennOVR

Parent Education and Advocacy Leadership (PEAL) Center

412-281-4404 www.pealcenter.org
866-950-1040

Parent to Parent of Pennsylvania

888-727-2706 www.parenttoparent.org

Pennsylvania State Task Force on the Right to Education

(Each intermediate unit has a local task force.)

800-360-7282, option 5 www.pattan.net/about-us/
717-541-4960, option 5 partners/state-task-force

Pennsylvania Training and Technical Assistance Network (PaTTAN)

800-441-3215 (East) www.pattan.net
800-360-7282 (Harrisburg)
800-446-5607 (Pittsburgh)

Public Interest Law Center of Philadelphia (PILCOP)

215-627-7100 www.pubintlaw.org

Glossary of Special Education Terms

Assistive Technology (AT) Device: A piece of equipment or product that is used to increase, maintain, or improve the way a child with a disability interacts and communicates with the world around them. This does not include a medical device that is surgically implanted or the replacement of such a device.

Assistive Technology (AT) Services: Services to help a child with a disability use an assistive technology device. These services include evaluating the needs of the child; providing the device; and then training the child, the child's family, and the professionals who work with that child in the use of the device.

Chapter 14: The state law pertaining to the delivery of special education services and programs. It is called "regulations" or is sometimes called "rules."

Child With a Disability: A child evaluated as having an intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, Autism Spectrum Disorder, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and who, as a result of the disability, needs special education and related services.

Due Process: The procedures that parents can use to disagree with the decisions of LEA officials concerning special education. The parent is informed of this right by written notice, which describes the options of a preliminary resolution session, a formal hearing, and appeals.

Evaluation: The process used to determine if a child has a disability and if special education is needed. The evaluation looks at how the child learns, the kinds of instruction that would be successful, and the kinds of instruction that have been tried and have not resulted in success.

Evaluation Report (ER): The report that is compiled and written by the evaluation team (which includes parents) following an evaluation. It describes all of the information gathered from the team members, including the results of assessment. From the report, the evaluation team determines the student's eligibility and need for special education programs.

Evaluation Team: A team of educators, other professional individuals, and the child's parents that reviews all formal testing of a child and all other evaluation material. The evaluation team must issue a written report stating if the child is a child with a disability who needs special education and making suggestions about the programs and services needed.

Free Appropriate Public Education (FAPE): A program of education and related services for a child with a disability that is designed to meet the child's special education needs. Appropriate services are those that allow the child to make meaningful progress in the educational setting. FAPE is provided without charge to parents.

Individualized Education Program (IEP): The plan written by the IEP team (including parents) that specifically describes the programs and services necessary for a free appropriate public education for the child with a disability.

Individuals With Disabilities Education Act (IDEA 2004): The federal law that governs the provision of special education services and the rights of parents of a child with a disability.

Least Restrictive Environment (LRE): Students eligible for special education will be educated to the maximum extent appropriate with students who are not disabled.

Notice of Recommended Educational Placement (NOREP)/Prior Written Notice (PWN): The notice given to parents that summarizes the recommendations of the school for the child's educational program, as well as other actions.

Parent: A birth parent, adoptive parent, surrogate parent, or foster parent who has been assigned educational decision-making rights. The term may also apply to an individual acting in the place of a birth or adoptive parent (including grandparent or other relative) with whom the child lives and who has educational decision-making rights, or an individual who is legally responsible for the child.

Related Services: Services necessary to provide specially-designed instruction to ensure the child benefits from the special education programs. Examples are special transportation, counseling, school health services, and physical therapy.

Secondary Transition Services: Specific planning in school that helps to prepare students with disabilities to participate more effectively in higher education or job training, community participation, independent living, continuing and adult education, and employment when they leave school.

Special Education: An educational program individually designed to meet the unique education needs for a child with a disability. A special education professional is directly involved as either a consultant or a provider of services.

Specially-Designed Instruction: Adapting the content, methods, or delivery of the instruction as is appropriate based on the unique needs of the child with a disability.

Supplementary Aids and Services (SaS): Aids, services, and other supports provided in general education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

Notes

Commonwealth of Pennsylvania

Tom Wolf, Governor

PaTTAN

Pennsylvania Training and Technical Assistance Network

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