

New Jersey Department of Education



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Parental Rights in Special Education

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New Jersey Department of Education

Parental Rights in Special Education

New Jersey Administrative Code for special education (N.J.A.C. 6A:14) and the federal *Individuals with Disabilities Education Act of 2004 (IDEA 2004)* are laws that ensure children with disabilities a free, appropriate public education in the least restrictive environment. An important part of these laws provides parents with the right to participate in their children's education.

You and representatives of your school district are team members who are responsible for developing an appropriate educational program for your child. This document will describe the state and federal laws affecting the provision of special education to help you understand your rights in the special education process. With this knowledge, you will be prepared to take an active role in your child's education.

This document has been developed for you by the Department of Education, Office of Special Education Programs, in an effort to provide the most comprehensive and up-to-date information. The document is periodically revised to reflect changes in the law, provide additional information that would be of use to you, and to provide the information in a more clear and concise manner.

If you need additional help in understanding your rights, contact information for the Statewide Parent Advocacy Network (SPAN), Disability Rights New Jersey (DRNJ), the County Offices of the New Jersey Department of Education and your local school district is listed on page 42.

This is the procedural safeguards statement required in accordance with New Jersey Administrative Code (N.J.A.C.) 6A:14-2.3(g)7.

Parental Rights in Special Education

REFERRAL

What is a referral?

A referral is a written request for an evaluation that is given to the school district when a child is suspected of having a disability and might need special education services.

Who can make a referral?

- Parents
- School personnel
- Agencies concerned with the welfare of students, including the New Jersey Department of Education

If you believe that your child may have a disability, you may refer your child for an evaluation by submitting a written request to your school district¹.

What happens when a referral is made?

Within 20 calendar days² of receiving a referral, the school district must hold a meeting to decide whether an evaluation will be conducted. If an evaluation will be conducted, another decision is made about the types of testing and other procedures that will be used to determine if your child needs special education services. If an evaluation will not be conducted, recommendations may be made with respect to interventions or services to be provided the student in general education.

DECISION-MAKING AND PARTICIPATION IN MEETINGS

How are decisions made about my child's special education needs?

Decisions regarding your child's special education needs are made at meetings. As the parent of a child who has or may have a disability, **you have the right to participate in meetings** regarding:

- **Identification** (decision to evaluate);
- **Evaluation** (nature and scope of assessment procedures);
- **Classification** (determination of whether your child is eligible for special education and related services);
 - Development and review of your child's **individualized education program (IEP)**;
 - Educational **placement** of your child; and
 - **Reevaluation** of your child.

You are considered a member of the multi-disciplinary team of qualified persons who meet to make these determinations and develop your child's individualized education program (IEP).

¹When writing to the school district about special education issues, you may write to the school principal, director of special education, child study team supervisor, case manager or other appropriate school official.

²This time frame excludes school holidays, but does not exclude summer vacation.



May the school district hold a meeting if I am unable to attend?

Yes. The school district may hold a meeting without you. The school district may do so if it is able to document that it made multiple attempts to schedule a meeting with you or obtain your participation in the meeting through telephone or video-conferencing and was unable to do so.

WRITTEN NOTICE

How will I be informed of decisions regarding my child's special education needs?

Your school district will inform you of decisions being made about your child by giving you written notice.

Written notice must be given when the school district:

- **Proposes to start or change:**
 - The identification, evaluation, and classification;
 - The implementation of an IEP or educational placement;
 - The provision of a free, appropriate public education (FAPE) to your child;
 - A reevaluation;
- **Asks for consent;** and
- **Approves or denies a request** you have made in writing about the identification, evaluation, educational placement or provision of a free, appropriate public education to your child.

What must be included in written notice?

Written notice must include a full description of the district's proposal and a statement that you have rights under special education law. If the district decides to conduct or not to conduct an initial evaluation, in addition to everything listed below, the district must give you a copy of the special education rules and the due process hearing rules.

When providing written notice, the school district must always:

- Describe the action it is proposing or refusing;
- Explain why it is or is not taking the action;
- Describe other options considered and explain why those options were rejected;
- Describe as applicable, the procedures, tests, records or reports used by the district to make the decision;
- Describe any other factors relevant to the district's proposal or refusal; and
- Include notice that you have rights under special education law.

When must I be provided a copy of this booklet?

You must be given a copy of this booklet one time per year and whenever:

- A parent requests a copy;
- Your child is referred for an initial evaluation;
- The first request for a due process hearing or first request for a complaint is submitted to the Department of Education in a school year; and
- The decision to take a disciplinary action is made that constitutes a change of placement.



When must the school district obtain my consent?

Your consent is required:

- **Before your child is evaluated for the first time** to determine whether your child is eligible for special education;
- **Before your child's special education program starts for the first time;**
- **Before your child is tested as part of a reevaluation.** However, if the district can show that it tried to get your consent for the reevaluation of your child and you did not respond, then the district may proceed to evaluate without your consent;
- **Before your child's records are released** to a person or organization that is not otherwise authorized to see them;
- **Each time your school district wants to access private insurance** covering your child;
- **The first time your school district wants to access public benefits or insurance** covering your child;
- **Whenever your school district wants to excuse a required team member** from a meeting of the IEP team;
- **Whenever your child's IEP is amended without a meeting of the IEP team;** and
- **Whenever you agree to waive a reevaluation of your child.**

What happens if I do not give consent for the proposed activity?

If you disagree with the proposed initial evaluation, reevaluation, or release of records and will not give consent, the school district cannot proceed. If the school district wants to proceed with any of these proposed activities, the school district must ask for a due process hearing (see page 17) to obtain consent from an administrative law judge (ALJ). At the due process hearing, the ALJ will decide if your child can be evaluated, reevaluated or if your child's records can be released without your consent.

If you do not agree with a proposal to implement the initial IEP, access public insurance (such as Medicaid) or your private insurance covering your child, a request to excuse a required IEP team member from a meeting, a request to amend your child's IEP without a meeting, or a request by your school district to waive the (three year) reevaluation of your child, the school district may not do what it is requesting. If you do not consent, the school district may not file for a due process hearing to ask an ALJ to provide consent for any of these types of requests.

Can I withdraw my consent after it has been given?

Giving consent is voluntary. You can revoke (withdraw) your consent at any time by writing to the school district. Revoking consent does not negate an action that has occurred after the consent was given and before the consent was revoked. If you write to the school district to revoke your consent after your child has received special education and/or related services, the school district has 10 days to respond to your written withdrawal with notice. The school district must accept your written revocation of consent and cannot utilize mediation or a due process hearing to seek to overturn your written revocation of consent.

The school district may decide to meet with you to discuss the revocation of consent. The meeting must be held within the 20-day time period to respond to the written revocation of consent and the school district must send you notice by the 20th day after you provide the school district your written revocation of consent. Once written notice is sent to you, you have 15 days to consider the written notice and withdraw the written revocation of consent if you choose. After the 15-day time period ends, your child will be considered a general education student for all purposes, including disciplinary matters, from that date forward.



USE OF INSURANCE

May the school district require that I utilize my private medical insurance or public insurance or benefits covering my child to obtain evaluations of my child, or special education or related services required to provide my child a free, appropriate public education (FAPE)?

No. The school district may not require you to consent to using public or private insurance covering your child to obtain an evaluation of your child, or to provide special education or related services (e.g. physical therapy, speech-language services) that your child needs to receive a FAPE. However, if your school district provides written notice and you consent, public or private insurance or benefits may be used. The district must inform you that providing consent is voluntary.⁵ Also, your consent must be requested and obtained by the school district every time it uses private insurance covering your child to obtain special education or related services for your child, and in accordance with federal regulations, the first time the school district seeks to use public insurance or benefits covering your child. This means, for example, if the school district asks to use your insurance to provide physical therapy for your child one time a week for the school year covered by your child's IEP, your consent must be provided at the beginning of the school year to use your insurance to provide the physical therapy for the year. If the school district later wants to use your insurance to provide another service, it must again ask for your consent before it may use your insurance.

Can my district access my Medicaid benefits?

Your school district may access your Medicaid benefits to receive money through the Special Education Medicaid Initiative (SEMI) program. A school district may access Medicaid benefits only if a consent form is signed by the parent. Signing the consent form will have no effect on your child's Medicaid health coverage. The district is also required to send a reminder to parents once per year which describes the SEMI program.

EVALUATION

What is an evaluation?

An evaluation is the process used to determine whether your child has a disability. This process includes a review of any relevant data, and the individual administration of any tests, assessments and observations of your child. For an initial evaluation, at least two child study team members⁶ and other specialists,⁷ as required or as determined necessary, must participate. A minimum of two assessments of your child are needed to determine eligibility for special education and related services. Each assessment must be conducted by a person who has appropriate training, or who is qualified to conduct the assessment through his or her professional license or certification.

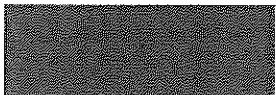
When is an evaluation needed?

An evaluation is needed when you, the members of the child study team, and your child's teacher meet and decide that your child may have a disability.

⁵If you do not consent to use your insurance, the district must still provide the service(s) at no cost to you.

⁶When the suspected disability is a language disorder, the speech-language specialist may participate as one of the two required child study team members.

⁷Specialists include but are not limited to, speech-language specialists, occupational therapists, physical therapists, and physicians.



Must my school district have assessed my child in the area(s) where I am asking for an independent evaluation before I am allowed to get an independent evaluation?

No. A district cannot limit your right to an independent evaluation by first conducting an assessment in an area not already assessed by the initial evaluation or reevaluation. Upon receiving your request, the district must provide information on where an independent evaluation can be obtained, or ask for a due process hearing.

Where can an independent evaluation be obtained?

An independent evaluation may be obtained from another school district, an educational services commission, a jointure commission, an approved clinic or agency, or a private practitioner, who is certified and/or licensed as required. Information regarding these resources must be provided to you by your school.

Can the school district impose limitations or restrictions on the choice of evaluators?

If the school district agrees to your request for an independent evaluation, the school district must provide information on where an independent evaluation may be obtained. To assist school districts and parents, the Department of Education maintains a list of approved clinics and agencies. School districts may suggest a number of clinics or agencies within the geographic area from that list. Parents must be able to obtain the requested evaluation from the suggested list within a reasonable time frame and at the rate determined by the district.

If you do not agree to select a provider from those suggested by the school district, the district must consider your request for a different provider. Also, the school district must consider your request for an evaluator that costs more than the school district usually pays for the same evaluation. If the school district disagrees with your request, it must request a due process hearing to deny your request.

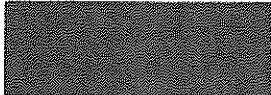
Such consideration and the district's decision to grant or request a due process hearing to deny the request must occur within 20 days of receipt of the request for an independent evaluation.

Are there any circumstances that would allow a school district to deny a request for an independent evaluation without requesting a due process hearing?

Yes. A school district may deny a parent's choice of evaluator without requesting a due process hearing, if the evaluator does not hold a New Jersey certificate and/or license, where a certificate and/or license is required. Additionally, parents are entitled to one independent evaluation (which may include more than one assessment) for each initial evaluation or reevaluation. Thus, after an independent evaluation has been conducted or an ALJ has decided that an independent will not be conducted, the school district may deny subsequent requests for an independent evaluation without requesting a due process hearing. When the district conducts another reevaluation, a parent may seek an independent evaluation if he or she disagrees with that reevaluation.

What is the school district required to do when it receives an independent evaluation?

The school district must consider any independent evaluation, including one you pay for, when making decisions regarding your child's special education program. However, the school district is not required to accept the evaluation report or incorporate any of its recommendations in your child's IEP. An independent evaluation may be presented as evidence at a due process hearing.



You have the right to:

- Copies of your child's IEP;
- Bring others with you to the meetings;
- Tape record IEP meetings if you inform the other persons orally or in writing, prior to the meeting starting that you intend to record the meeting;
- Have the IEP implemented within 90 days of the school's receipt of your consent for the first evaluation;
- Have the IEP implemented as soon as possible following an IEP meeting;
- Have the IEP reviewed at least annually; and
- Have extended school year services considered by the IEP team.

TRANSITION TO ADULT LIFE

What is transition planning?

Transition planning is a formal, long-range cooperative process that will assist your child to successfully move from school into the adult world. New Jersey regulations require that transition planning begins to be addressed in the IEP that will be in a place for the school year in which your child reaches 14 years of age, or younger if determined appropriate by the IEP team. Transition planning continues to be addressed in your child's IEP each year until graduation or exit from high school.

Who is involved in transition planning?

Transition planning typically involves the IEP team, other family members, school staff, staff from other agencies, employers and other community members. Whenever transition planning will be included in the IEP, the student **must** be invited to attend the IEP meeting and become an integral member of the IEP team.

What are the components of transition planning?

The following are key components of transition planning in the IEP for children turning 14 and older:

- A statement of the child's strengths, interests and preferences
- Identification of a course of study (course titles for the duration of the IEP and beyond)
- Identification of strategies and/or activities that are intended to assist the child in developing or attaining postsecondary goals
- A description of the need for consultation (information and/or advise) from other agencies (such as the Division of Vocational Rehabilitation Services, Children's System of Care, Division of Developmental Disabilities, etc.)
- A statement of any needed interagency linkages and responsibilities

Additional key components are included as part of transition planning in the IEP for children turning 16 and older:

- The child's postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living
- The transition services needed to assist the child in reaching those postsecondary goals (a coordinated set of activities/strategies that includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation)

For additional information on transition planning, see the Resources section of this document.

CONFIDENTIALITY AND ACCESS TO EDUCATIONAL RECORDS¹⁰

May I see my child's educational records?

School districts must maintain the confidentiality of information in your child's educational record. However, the public school maintaining your child's educational records must assume you have authority to inspect/review your child's records unless the school has been legally notified in writing that your rights have been terminated under state law, such as through guardianship or divorce.

You have the right to:

- Ask to see a list of all the types of records kept regarding your child and where the records are kept;
- Look at any of your child's educational records which are kept or used by the school district:
 - ▶ Without unnecessary delay;
 - ▶ Before any IEP meeting or hearing; and
 - ▶ Within 10 days after asking to see the records.
(If possible, this request should be in writing.)
- Ask for an explanation and interpretation of the records;
- Obtain copies of the records. A school may charge a reasonable fee for copying if that fee does not prevent you from reviewing the records. The school may not charge a fee to search for or retrieve the records;
- Be notified before information in your child's records is destroyed; and
- Give consent or refuse to give consent to share your child's records with anyone who does not have an educational or legal purpose in seeing them.

The school must keep a record of those obtaining access to your child's record, including names, dates and purposes for the access. If you ask, you have a right to be told who has been given information from your child's records, the date it was given and how it was used.

The school district must obtain your written consent before any personally identifiable information about your child may be released to any person not otherwise entitled by law to have access to it (see page 5).

If you give the school written consent, you can have someone else receive and/or review the records for you. If a record has information on more than one child, you may look at the information about your child only.

Do I have a right to review my child's records when he/she becomes an adult student?

Until your child reaches age 18, you have access to all educational records maintained by the school. After the transfer of rights upon reaching the age of majority, you have the right to access your child's educational records only if your child is still financially dependent on you and is still enrolled in the public school system, or if you have your adult child's consent for access.

How do I get my child's records changed?

You may ask the school district to change your child's educational records if you believe the records:

- Are irrelevant;
- Are inaccurate;
- Do not protect privacy or other rights of your child; or
- Are otherwise improper.

¹⁰The regulations for student records are found at N.J.A.C. 6A:32. The school district is required to give you a copy of these regulations when you ask.



PLACING YOUR CHILD IN A NONPUBLIC (PRIVATE) SCHOOL – DUE TO DISAGREEMENT

If I disagree with the school district's program and I place my child in a nonpublic (private) school, who is responsible to pay for the costs?

Your child has the right to a free, appropriate public education. If your child is enrolled in a public school and you disagree with the school district's special education program, you may choose to place your child in a private or a nonpublic school, or a private early childhood program that you believe meets your child's special education needs. You are responsible for the costs, unless it can be proven at a due process hearing that the district failed to provide your child with a free, appropriate public education and the school you chose is appropriate to meet your child's educational needs.

What must I do if I plan to ask the school district to reimburse me for the costs of the nonpublic (private) school?

If your child has an IEP developed by the school district, you may place your child in a nonpublic (private) school and seek reimbursement from the district. You must inform the school district at an IEP meeting and provide the school district with written notice at least 10 days (excluding weekends only) prior to the enrollment of your child in the nonpublic (private) school. You must state your disagreement with the school district's IEP, the placement proposed by the school district and your intention to enroll your child in a nonpublic (private) school.

If the school district has provided you with written notice of its intent to evaluate your child, before your removal of your child from the public school, you should make your child available to the school district for evaluation in order to protect your claim for reimbursement.

Failure to inform the school district of your intention to make a private placement at public expense, failure to make your child available for evaluation, or other unreasonable action on your part could result in an ALJ's decision to reduce or deny reimbursement for the private placement.

PLACING YOUR CHILD IN A NONPUBLIC (PRIVATE) SCHOOL – DUE TO PREFERENCE (EQUITABLE PARTICIPATION SERVICES)

If I have placed my child in a nonpublic (private) school because I prefer the type of education offered by the nonpublic school, does my child have a right to special education and related services from a public school district?

A student with a disability who is enrolled by his or her parents in a nonpublic school does not have an individual entitlement to receive some or all of the special education and related services that he or she would receive if enrolled in the public school. However, your child does have a right to be referred to a child study team for an evaluation for eligibility for special education and related services.

If your child is a preschool student enrolled in an early childhood program, your school district of residence is responsible to identify him or her and, if appropriate, evaluate for eligibility for special education and related services. If your child is found eligible, your school district of residence would offer a program designed to provide him or her a free, appropriate public education. Such a program would be provided following enrollment in the public school district and would be provided in a placement determined by the IEP team. If you decline the program offered by your school district of residence because you want your child to remain in the early childhood

How are mediators selected?

Mediators are not employed by the SEA. They are selected on a rotating basis. When a request for mediation is received, the next available mediator is assigned to conduct the mediation conference.

Who may ask for mediation?

Either you or the school district may ask for mediation if there is a disagreement.

How much does mediation cost?

Mediation is provided at no cost to you or the school.

How can I request mediation?

You may submit a written request to:	The request for mediation must:
Director Office of Special Education Programs New Jersey Department of Education P.O. Box 500 Trenton, New Jersey 08625-0500 Or you may email your request to: osepdisputeresolution@doe.state.nj.us	State the issue (problem); Specify the relief (solution) sought; and Show that a copy of the request was sent to the school district.

A request form that may be used to ask for mediation is attached to the end of this booklet. Please note that use of the model form is not required; however, providing the requested information will assist in expediting your request.

Can a parent file a request for mediation through electronic mail or other electronic submission?

Beginning July 1, 2016, the OSEP will accept requests for mediation, a due process hearing, emergent relief (request only; attachments must be sent separately via regular mail) electronically through an OSEP-maintained and monitored email address. The newly created email address will be used exclusively for the submission of requests and will not be used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to an email sent to: osepdisputeresolution@doe.state.nj.us. Adobe Acrobat Reader is document reader software that is available for free download at: <https://get.adobe.com/reader/>. Please note that requests for a complaint investigation, enforcement of a mediation agreement or enforcement of a final decision issued by the Office of Administrative Law will **NOT** be accepted via electronic mail and must be mailed or faxed to the OSEP to be accepted and processed.

May I bring an advocate or lawyer to the mediation conference?

You may bring an advocate and/or lawyer with you to help you in the mediation conference. The school district may also bring a lawyer to the mediation conference even if you do not.

What happens to my child during mediation?

From the time a proper request for mediation is received until the mediation is completed, your child's classification, program or placement cannot be changed unless you agree with the school to make the change or emergent relief (see page 20) is requested by you or the district and granted by an ALJ.

What happens if an agreement is reached? If an agreement is not reached?

If you and the school district reach an agreement, it will be written by the mediator and signed by both you and the school district. If discussions during mediation do not result in a written agreement, then only the date and the names of persons at the mediation will be recorded. Mediation discussions are confidential and may not be used as evidence in a hearing. Mediation conferences may not be tape-recorded.



Can a parent file a request for due process through electronic mail or other electronic submission?

Beginning July 1, 2016, the OSEP will accept requests for mediation, a due process hearing, emergent relief (request only; attachments must be sent separately via regular mail) electronically through an OSEP-maintained and monitored email address. The newly created email address will be used exclusively for the submission of requests and will not be used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to an email sent to: osepdisputeresolution@doe.state.nj.us. Adobe Acrobat Reader is document reader software that is available for free download at: <https://get.adobe.com/reader/>. Please note that requests for a complaint investigation, enforcement of a mediation agreement or enforcement of a final decision issued by the Office of Administrative Law will **NOT** be accepted via electronic mail and must be mailed or faxed to the OSEP to be accepted and processed.

May I request mediation and a due process hearing at the same time?

Yes. Either you or the school district may request mediation as part of a request for a due process hearing.

When must I file my request for a due process hearing?

You must file your request for a due process hearing within two years of the date you knew or should have known of the action of the school district you are challenging. The time period will only be increased if you demonstrate to an ALJ that the school district made you believe the matter has been resolved to your satisfaction, or if the school district withheld information from you that it was required by law to provide to you.

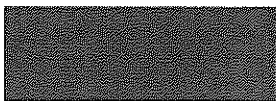
What happens when I request a due process hearing?

Within 15 days of receipt of the request for a due process hearing, you and the school district (the parties) must participate in a resolution meeting arranged and conducted by the district. In place of the resolution meeting, the parties may agree to mediation conducted by the OSEP, or the parties may agree in writing to waive the resolution meeting. If the parties are participating in a resolution meeting, the district will arrange this meeting. If the parties have agreed to mediation, a representative from the district must contact the OSEP to facilitate the scheduling of the mediation conference, at which time the OSEP staff will obtain available dates from the parties and arrange the mediation conference. The resolution period, during which a resolution meeting or mediation is held, lasts for 30 days, after which the matter may be transmitted to the OAL for a due process hearing if the parties have not resolved the dispute.

In addition to participating in mediation or a resolution meeting, the school district must file the necessary response to your request for a due process hearing within 10 days of receiving the request.

What happens if the school district fails to schedule the resolution meeting within 15 days?

If the school district does not schedule a resolution meeting within the required timeline and you and the school district are not participating in mediation and have not waived the resolution meeting, you may file a request with OSEP at the address listed above to ask an ALJ to schedule your case for a due process hearing and begin the 45-day timeline. The ALJ will decide whether the school district had a good reason for not scheduling a resolution meeting. If the ALJ determines the school district did not have a good reason for failing to schedule the resolution meeting, the ALJ may order the due process hearing to begin. If the ALJ decides that the school district had a good reason for not scheduling the resolution meeting, the ALJ may order that the resolution meeting or a mediation conference be held within a specific time period before the case goes to a due process hearing.



If you request mediation or a due process hearing after the 15-day period has expired, the school district may implement the proposed action. If you disagree with your child's placement pending the outcome of your request for a due process hearing, you may request emergent relief.

What happens if the school district does not comply with the decision of an ALJ in a due process hearing?

You have the right to either go to court to seek an order that the school district comply with the decision of the ALJ, or you may submit a written request to the Director of the OSEP at the address listed above and seek enforcement of the decision of the ALJ. You must make your request within 90 days of when the school district was to complete the action you assert did not occur, and your request must include a copy of the decision of the Office of Administrative Law. The school district may then respond to the request and seek to resolve the disagreement with you. If the matter is not resolved, the OSEP will determine whether the school district failed to comply with the decision of the ALJ and, if it is determined that the school district did not do so, the OSEP will direct the school district to comply. However, if you and the school district agree to modify the ALJ's decision after it is issued, you may not seek enforcement of that part of the ALJ's decision that you modified. A form that may be used to request enforcement of the due process decision is attached to the end of this booklet.

EXPEDITED DUE PROCESS HEARINGS

What is an expedited due process hearing?

An expedited due process hearing is a hearing before an ALJ on disciplinary matters. For example, if you disagree with the determination of the IEP team that your child's behavior was not a manifestation of his disability, you may request an expedited hearing. If the school district believes it is dangerous for your child to remain in his or her current placement and you and the district cannot agree to an appropriate placement, the district must request an expedited hearing to remove your child.

What is the difference between an expedited due process hearing and other due process hearings?

An expedited due process hearing must be held within 20 school days of the request for a due process hearing, and the decision of the ALJ must be issued within 10 school days of the hearing. In addition, the resolution period for an expedited due process hearing is 15 days, and the mediation or resolution meeting should be held within 7 days of the request for the due process hearing.

Is mediation available as part of an expedited hearing?

Yes. Mediation is available.

APPLICATION FOR EMERGENT RELIEF

What is emergent relief?

Emergent relief is an immediate (interim) decision on an issue that is related to a due process hearing. The interim decision is made pending the final decision in the case. The issue that is subject to the emergent relief is heard quickly and without the opportunity for mediation or a resolution meeting.

- Either party may present evidence, require the attendance of witnesses and cross-examine witnesses;
- Either party may ask the ALJ to stop the introduction of any evidence, including any evaluations or recommendations based upon those evaluations, that has not been exchanged at least five days before a due process hearing or at least two days before an expedited due process hearing; and
- Either party may get a written or electronic verbatim record of the hearing. You have the right, at your option, to a written or electronic word for word record of the hearing and the findings of fact and decision. The recorded findings of fact and decision will be provided to you the parent, at no cost.

You have the right to:

- Ask for and receive, from your school district, a list of any free or low-cost legal and other advocacy services available. The OSEP sends you this list when you ask for a due process hearing;
- See the list of the ALJs and their qualifications which is maintained by the OAL;
- Have the hearing open to the public;
- Have your child present at the hearing;
- Have an interpreter present, if needed, at no cost to you; and
- Have the hearing held at a time and place reasonably convenient to you.

Students with disabilities who are over age 21 and are receiving special education services have the right to request mediation or a due process hearing to resolve a dispute regarding identification, evaluation, placement or provision of a free, appropriate public education.

Copies of due process decisions are provided to the State Special Education Advisory Council (SSEAC) and are available to the public after personally identifiable information has been removed.

Administrative Law Judges

- Hearings cannot be conducted by a person employed by any public agency involved in the education or care of your child or otherwise having a personal or professional conflict of interest. In New Jersey, the hearing is always conducted by an administrative law judge from the Office of Administrative Law. An ALJ is not considered an employee of a public agency involved in the education or care of your child solely because he or she is paid to conduct the due process hearing.
- The decision made by an ALJ is final and must be followed by you and the school district unless either party appeals the decision to a state or federal court within 90 days of the date of the decision.

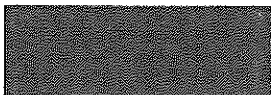
Can I appeal the decision of the Administrative Law Judge in a due process hearing if I do not agree with it?

Yes. The decision of the ALJ in a due process hearing is final and may only be reviewed and changed by the United States District Court or the Superior Court of New Jersey in accordance with the rules of each court for filing a case with them. If you disagree with the decision of the ALJ in your due process case, you may appeal to either of these courts within 90 CALENDAR DAYS of the date the decision is issued by the ALJ. In an appeal, the court will review the record of the due process hearing provided by you and the school district and hear additional evidence at the request of you or the school district. The court will then issue a decision based on a preponderance of the evidence.

ATTORNEY FEES

How can I recover attorney fees?

You may request an order from either a state or federal court to award reasonable attorney fees and costs within the limits of the law if you prevail in your due process hearing.

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3. During the investigation period, if one is necessary, the OSEP conducts interviews and reviews documentation submitted by the parties to determine whether the education agency was compliant or noncompliant.
 4. Unless a complaint is resolved early, a report will be issued, which will include factual findings, conclusions and corrective action, if necessary.

What information must be included in the complaint investigation request?

The complaint must:

- State the specific violation of special education law that you believe has occurred;
- Provide the facts on which the statement is based; and
- State when the alleged violation occurred.

A model form to assist you in filing a complaint is provided at the end of this booklet. Please note that use of the model form is not required; however, providing the requested information will assist in expediting your request.

How long does it take to make a determination on a complaint?

Federal/state law and regulations require that a determination be made on a complaint within 60 calendar days of receipt of the written, signed complaint, unless an extension of the timeline has been obtained, as permitted by regulation. For this reason, the parties are asked to work cooperatively to resolve the issues raised in the complaint and/or to submit necessary documentation promptly.

What happens if there are areas of noncompliance?

If the education agency is found to be noncompliant, a corrective action plan in accordance with the directive(s) in the report shall be developed by the education agency and submitted to the OSEP.

What happens if a complaint is filed on the same issue that is being addressed in a due process hearing?

If a complaint is submitted on the same issue that is being addressed in a due process hearing, the complaint must be set aside until the conclusion of the due process hearing. If the complaint contains multiple issues, and one or more are issues included in a due process hearing, the issues in the complaint that are being addressed by the due process hearing must be set aside until the conclusion of the due process hearing. However, any issue in the complaint that is not a part of the due process hearing must still be resolved within the required time limits.

If I have already filed a request for a complaint investigation, can I still request a due process hearing?

Yes. However, if a complaint is also the subject of a due process hearing, the OSEP must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding.

What happens if a complaint is filed on an issue that has already been decided in a due process hearing?

The Office of Special Education Programs must inform the individual or organization submitting the complaint that the decision in the due process hearing is binding. Therefore, an investigation cannot be conducted.

Will I have the opportunity to provide information about the complaint?

Yes. The complainant is given the opportunity to provide information, either orally or in writing about the complaint.



Can the school district remove my child repeatedly for separate incidents of misconduct?

Yes. School officials can remove your child from his or her current placement for up to 10 school days at a time, whenever discipline is appropriate, and such removal is consistent with the treatment of nondisabled children. In addition, school officials also may implement additional suspensions of up to 10 school days at a time in the school year for separate incidents of misconduct if educational services are provided for the remainder of the removals, to the extent required. School officials do not have to involve you in the decision to remove your child or in the decision about the services to be provided. However, school officials cannot repeatedly remove your child for short-term suspensions (up to 10 school days at a time) if these suspensions constitute a pattern that is a change of placement.

What steps must the school take when implementing a series of short-term removals?

A series of short-term removals from your child's current educational placement may be a pattern that results in a change in placement when the total number of school days accumulates (adds up) to more than 10. School officials in consultation with the case manager determine whether the series of short-term removals is a change in placement. The determination of whether the series of short-term removals constitutes a change in placement is based on whether the conduct that resulted in a removal is similar to conduct that resulted in previous removals and consideration of the following factors: the length of each removal, the total amount of time your child is removed, and the proximity (nearness) of the removals to each other.

If the series of short-term removals is not a change in placement, your child may be removed from his or her current placement. School district officials in consultation with the child's case manager and at least one of your child's teachers determine the extent to which services are necessary to enable your child to participate in the general education curriculum and to advance appropriately toward achieving the goals set out in your child's IEP.

If school officials in consultation with the case manager, determine that the series of short-term removals is a change of placement, the IEP team must meet to determine whether the misconduct is a manifestation of the student's disability (a **manifestation determination**). As a member of the IEP team, you have a right to participate in these meetings. A manifestation determination is made by school district officials, relevant members of the IEP team and you. Conduct is a manifestation of a student's disability if:

- the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; OR
- the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If either of these criteria is met, the conduct in question is a manifestation of your child's disability. If so, the school district must conduct a functional behavioral assessment (FBA) of your child unless it had already conducted one prior to the behavior that resulted in the disciplinary action. The school district must also develop a behavior intervention plan (BIP) for your child or amend the BIP if your child already has a BIP. If the conduct is determined to not be a manifestation of your child's disability, you and the school district still may agree to conduct a functional behavioral assessment of your child and to revise or develop a BIP for your child.

If the behavior is a manifestation of your child's disability, your child must not be removed from his or her current educational placement (except in the case of drugs, weapons or serious bodily injury) unless the IEP team develops a new IEP and proposes a new placement for your child. If the behavior is not a manifestation of your child's disability, he or she may be disciplined as any other child except that the school must continue to provide services to your child. The IEP



What steps can the school take to remove my child for danger to self or others?

The school district may get an order from an ALJ to change your child's educational placement to an IAES for up to 45 days, if there is a danger that your child or others are likely to be injured if your child stays in the current placement. The ALJ will decide the IAES.

Placement During the Pendency of Mediation or a Due Process Hearing for Disciplinary Action

If you initiate mediation, a due process hearing, or an expedited due process hearing for a removal of more than 10 cumulative school days in a school year, the removal may occur while the disagreement is resolved.

If you initiate mediation, a due process hearing or an expedited due process hearing for a removal of more than 10 consecutive school days, you and your school district must conduct a manifestation determination to determine whether the conduct that resulted in the discipline was caused by your child's disability. If the conduct was a manifestation of your child's disability, your child must be returned to his former placement while the matter is pending unless you and the school district agree otherwise or emergent relief altering your child's placement is granted by an ALJ. If it is determined that the conduct was not a manifestation of your child's disability, your child will remain in the IAES until the matter has been resolved by final decision or an agreement between you and the school district, or until the period of removal expires, whichever occurs first.

In cases where your child is placed in an IAES for drugs, weapons or serious bodily injury, unless you and your school district agree otherwise your child will remain in the IAES for a period of 45 calendar days or until a final decision is issued by the ALJ, whichever occurs sooner. Thereafter, your child will return to his or her previously agreed upon placement unless the ALJ orders another placement or you and the school district agree to another placement.

NEW JERSEY DEPARTMENT OF EDUCATION

**PARENTAL REQUEST FOR MEDIATION/DUE PROCESS HEARING/
EXPEDITED DUE PROCESS HEARING**

PLEASE NOTE: In accordance with IDEA 2004, you must complete all the information requested as fully and accurately as possible. Also, you must identify the specific reasons for the disagreement with the identification, evaluation, eligibility, classification, placement or provision of programs or related services for your child. If the information is incomplete or the reasons for your disagreement are vague or unclear, the district may challenge the sufficiency of your request for a due process hearing. Requests for mediation only are not subject to a sufficiency challenge.

The entire petition must be filed with the Office of Special Education Programs and one copy of the entire petition must be filed with the district.

*Date: _____

To: **Director
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500**

Beginning July 1, 2016, the OSEP will accept requests for mediation, a due process hearing, emergent relief (request only; attachments must be sent separately via regular mail) electronically through an OSEP-maintained and monitored email address. The newly created email address will be used exclusively for the submission of requests and will not be used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to an email sent to: osepdisputeresolution@doe.state.nj.us. Adobe Acrobat Reader is document reader software that is available for free download at: <https://get.adobe.com/reader/>. Please note that requests for a complaint investigation, enforcement of a mediation agreement or enforcement of a final decision issued by the Office of Administrative Law will **NOT** be accepted via electronic mail and must be mailed or faxed to the OSEP to be accepted and processed.

*From: _____
(Full name of parent(s) submitting the request)

Address: _____

*County: _____

*Home Phone: (_____)_____-_____

*Fax: (_____)_____-_____

*Work Phone: (_____)_____-_____

*Cell Phone: (_____)_____-_____

*Email Address: _____

*Please check whether you will be represented by _____an attorney or assisted by _____an advocate.

*Name of attorney or advocate: _____

*Address: _____

*Phone: (_____)_____-_____

*Fax: (_____)_____-_____

Child's Name _____ Date of Birth: _____

*Child's Address (If different from parent's address): _____

**Items marked with an asterisk are not required.*

NEW JERSEY DEPARTMENT OF EDUCATION

**PARENTAL REQUEST FOR MEDIATION/DUE PROCESS HEARING/
EXPEDITED DUE PROCESS HEARING**

3. Please provide a description of how this problem could be resolved. Attach additional sheets as needed:

4. A copy of this petition must be provided to the other party. Please check to verify.

A copy of this request was sent to the superintendent of the school district:

Name of the superintendent: _____

Address: _____

5. Parent's signature: _____

Note to parent(s) requesting a due process hearing: The IDEA Amendments of 2004 provide that attorneys' fees may be reduced if the parent or parent's attorney unreasonably protracted the final resolution of the controversy or the attorney representing the parent did not provide to the district the appropriate information in the due process request.

REQUEST FOR EMERGENT RELIEF

**TO BE COMPLETED WHEN AN INTERIM (TEMPORARY) DECISION IS REQUIRED
PENDING A FINAL DECISION OF THE UNDERLYING ISSUES IN DISPUTE.**

Please describe how this problem could be resolved. (Attach additional pages if necessary.):

Please check to verify that a copy of this request was sent to the district superintendent:

Name of other party: _____

Address: _____

Phone: (_____) _____ - _____

**NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP)**

***CERTIFICATION IN LIEU OF AFFIDAVIT OR NOTARIZED STATEMENT
OF PETITIONER SEEKING EMERGENT RELIEF**

6. I have completed the Request for Emergent Relief, and provided the Department of Education with the relevant information required on the Request for Emergent Relief.

7. I have provided a completed and signed copy of my Request for Emergent Relief to the Opposing Party.

(Name of Opposing Party)

Note: If you are/represent the Parent or Guardian, you must provide a copy to the Superintendent of the student's school district of residence. If you represent the School District, you must provide a copy to the attorney/parent or guardian/adult student.

(Full Address of Opposing Party)

(Date Submitted to Opposing Party)

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

(Petitioner's Signature)

Dated: _____, 20_____

*Pursuant to N.J. Court Rules, 1969, R. 1:4-4(b).

**NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP)
COMPLAINT FORM**

3. Specify the period of time or dates when the alleged violation(s) occurred. _____

Note: The complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received.

* 4. Is/Are the alleged violations continuing at present? Yes No

5. **State the relevant facts**, including any claim that the district has failed to provide services required by the IEP of a student with disabilities. If you are claiming that the district has failed to implement the IEP, please include a copy of the entire IEP. (Attach additional pages, if necessary. If you have other written documentation from the school that you believe would assist in verifying the violation, please submit them with this request.)

6. Please describe how the issue(s) could be resolved. Attach additional pages as necessary.

*7. Please list the district personnel you have already talked with to resolve this complaint, along with their response(s) to your request.

NEW JERSEY DEPARTMENT OF EDUCATION

PARENTAL REQUEST FOR ENFORCEMENT OF A MEDIATION AGREEMENT

Date: _____

To: **Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

The OSEP will NOT accept a request for enforcement of a mediation agreement through electronic submission. All requests must be mailed or faxed to the OSEP to be accepted and processed.

Relationship to Student(s): (Check One)

Parent/Guardian Attorney Advocate

From: _____
(Name of person submitting the request)

Address: _____

Phone: (____) ____ - ____ Fax: (____) ____ - ____ Email address: _____

Please Note: The Office of Special Education Programs (OSEP) must have a copy of the mediation agreement before any action can be taken with respect to a request for enforcement.

Is a copy of the mediation agreement included with this request? ____Yes ____No If not, is a copy being sent by separate mailing? ____Yes ____No

What is the date of the mediation agreement? _____

Subsequent to signing the mediation agreement, have the parties reached any agreements that modify the original mediation agreement? ____Yes ____No (If yes, explain below)

Note: If any part of the mediation agreement is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the agreement.

**NEW JERSEY DEPARTMENT OF EDUCATION
PARENTAL REQUEST FOR ENFORCEMENT OF A FINAL DECISION
ISSUED BY THE OFFICE OF ADMINISTRATIVE LAW**

Date: _____

To: **Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

The OSEP will NOT accept a request for enforcement of a final decision issued by the Office of Administrative Law through electronic submission. All requests must be mailed or faxed to the OSEP to be accepted and processed.

Relationship to Student(s): (Check One)

Parent/Guardian Attorney Advocate

From: _____
(Name of person submitting the request)

Address: _____

Phone: (____) ____ - ____ Fax: (____) ____ - ____ Email address: _____

Please Note: The Office of Special Education Programs (OSEP) must have a copy of the ALJ's decision before any action can be taken with respect to a request for enforcement.

Is a copy of the final decision (or Order) issued by the Administrative Law Judge (ALJ) included with this request?
____Yes ____No If not, is a copy being sent by separate mailing? ____Yes ____No

What is the date of the ALJ's decision? _____

Subsequent to issuance of the decision, have the parties reached any agreements that modify the decision or the terms of the Order? ____Yes ____No (If yes, explain below)

Note: If any part of the decision is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the agreement.

RESOURCES

For help in understanding your rights, you may contact any one of the following:

School District Representative

Phone Number

Statewide Parent Advocacy Network (SPAN) at (800) 654-7726

Disability Rights New Jersey (DRNJ) at (800) 922-7233

New Jersey Department of Education through its _____ County Office:

County Supervisor of Child Study

Phone Number

OSEP website: www.state.nj.us/education/specialed/

RESOURCES FOR TRANSITION TO ADULT LIFE

Office of Special Education Programs in the New Jersey Department of Education:

The Office of Special Education Programs provides training and technical assistance on the topic of transition from school to adult life to school staff, students and family members through the Learning Resource Center network. Information and resources on transition are available on the web: <http://www.state.nj.us/education/specialed/transition/>

OSEP also sponsors training initiatives for school districts on the transition-related topics of Community-Based Instruction, and Person-Centered Approaches through a partnership with The Boggs Center on Developmental Disabilities at Rutgers.

Community-Based Instruction

Community-Based Instruction is research-based practice involving sustained and repeated instruction that takes place in the community rather than in the school building. CBI training and technical assistance efforts assist school districts in providing instruction for students in community-based settings. These efforts include providing information to districts through workshops, sharing successful efforts currently occurring in New Jersey school districts, and offering direct technical assistance to school districts addressing CBI strategies, training needs, and necessary administrative supports. All activities are designed to create positive, observable outcomes for students.

Person-Centered Approaches

The New Jersey Department of Education, Office of Special Education Programs, in partnership with The Boggs Center, conducts planning, development, and pilot activities aimed at promoting effective transitions for students with disabilities through the use of person-centered approaches. The Boggs Center provides expertise in these approaches to the critical process of planning for effective transitions from school to adult life, including employment and engaging with adult service systems. The project aims to identify strategies to positively impact postschool outcomes. For more information on transition to adult life go to: <http://www.state.nj.us/education/specialed/transition/>

Structured Learning Experience (SLE)

Structured learning experience means experiential, supervised in-depth learning experiences that are designed to offer students the opportunity to more fully explore career interests. For more information on SLE, go to: <http://www.state.nj.us/education/cte/sle/>

Division of Mental Health and Addiction Services in the New Jersey Department of Human Services:

The Division is the state mental health authority (SMHA) and the single state authority on substance abuse (SSA).

Services that are provided may include:

- Services in Four Psychiatric Hospitals Operated by the Division
- Monitoring and Provision of Services in County Hospitals
- Community Mental Health Services Provided by Numerous Agencies may include:
 - Screening and emergency services
 - Intensive case management
 - Partial care/partial hospital
 - Program for Assertive Community Treatment (PACT)
 - Individual, group and family therapy
 - Supported employment/Welfare to work
 - Supported housing
 - Criminal Justice Services
 - Self-help centers and services

Contact Information: P.O. Box 700
Trenton, N.J. 08625
Phone: (800) 382-6717
(609) 777-0702
FAX: (609) 777-0662
<http://www.state.nj.us/humanservices/dmhas/home/index.html>

Department of Children and Families:

Children's System of Care

DCF's Children's System of Care, (CSOC), (formerly the Division of Child Behavioral Health Services) serves children and adolescents with emotional and behavioral health care challenges and their families; and children with developmental and intellectual disabilities and their families. CSOC is committed to providing these services based on the needs of the child and family in a family-centered, community-based environment.

Contact Information: 50 East State Street
PO Box 717, 4th Floor
Trenton, NJ 08625-0717
Phone: 1-877-652-7624
If you have questions or concerns, you can contact us at:
<http://www.nj.gov/dcf/about/divisions/dcsc/>

Commission for the Blind and Visually Impaired:

The New Jersey Commission for the Blind and Visually Impaired (CBVI) was established in 1910 by order of the NJ State Legislature. This agency's mission is to promote and provide services in the areas of education, employment, independent living and eye health through informed choice and partnership with persons who are blind or visually impaired, their families and the community.

CBVI's service programs are designed to enable consumers to achieve full inclusion and integration in society through success in employment, independent living, and social self-sufficiency.

These services are made available through state and Federal funding and for the most part, are provided free of charge to residents of New Jersey without regard to other disabling conditions, gender, age, race, ethnicity, religion, or sexual orientation.

Contact Information: New Jersey Commission for the Blind & Visually Impaired
P.O. Box 47017
153 Halsey Street, 6th Floor
Newark, N.J. 07101-47017
Phone: (973) 648-3333
Toll Free: (877) 685-8878
E-Mail: askcbvi@dhs.state.nj.us
<http://www.state.nj.us/humanservices/cbvi/home/index.html>

Family Support Center of New Jersey:

The Transition Matters website is operated by the Family Support Center of New Jersey (FSCNJ). The website has resources regarding transition from school to adulthood for families seeking information and referral. Information includes upcoming webinars and workshops, resources to help caregivers through the transition process, as well as statewide and regional contact information. FSCNJ runs several specialized programs such as the Assistive Technology Project and various sibling support programs. If there is something you can't find, please call one of their Resource Coordinators at 800-372-6510.

Contact Information: Family Support Center of New Jersey
Phone: (800) 372-6510
FAX: (732) 2624373
E-Mail: askcbvi@dhs.state.nj.us
www.transitionmatters.org