
Education Rights for Students with Disabilities

What laws protect children with special needs?

The federal Individuals with Disabilities in Education Act (IDEA) guarantees a free appropriate public education (FAPE) in the least restrictive environment (LRE) to all students with disabilities who qualify for special education services. Schools must provide individualized supports and services so that a child with a disability can make meaningful educational progress. The LRE mandate requires that all students with disabilities be educated alongside their nondisabled peers in the general education classrooms to the maximum extent appropriate.

Section 504 of the Rehabilitation Act is a civil rights statute that bars schools from discriminating against children with disabilities, including but not limited to failing to provide them with accommodations.

In accordance with the IDEA, Section 504 of the Rehabilitation Act and Chapters 14 and 15 of the Pennsylvania Code, the Pennsylvania Department of Education provides supervision over all public schools, school districts and other public education agencies within the state to ensure that eligible disabled students receive a FAPE in the LRE, as well as those related aids, services or accommodations that are needed to afford each student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination. The department also ensures that each family and school has the benefit of a system to resolve disagreements.

What disabilities qualify for special education services?

A student may qualify for special education services under the IDEA if he/she has autism, an intellectual disability, an emotional disturbance, an orthopedic impairment, a hearing impairment or deafness, a speech or language impairment, a visual impairment or blindness, a traumatic brain injury, a health impairment, a specific learning disability or multiple disabilities. In order to qualify for special education, the student must also require specialized instruction and related services. The need for special education must be determined by a multi-disciplinary evaluation team.

What steps can parents/guardians take on behalf of a child who may need special education services?

Parents/guardians have the right, under state and federal law, to a free, confidential evaluation from the school to determine whether a child is eligible for special education services. For preschool-age children, the evaluation is to be completed by an early intervention agency. After the parents/guardians grant permission by signing a "Consent to Evaluate" form provided by the school, the evaluation process must be completed within 60 calendar days (not including summer vacation).

If the evaluation determines that a child is eligible for special education, those services are to be provided at no cost to parents/guardians and are to be outlined in an Individualized Education Program (IEP) that must be created within 30 days after the evaluation team issues its evaluation report. The IEP is developed by an IEP team for the child and the parents/guardians are essential members of that team. A copy of the evaluation report must be given to parents/guardians at least 10 days before the meeting to develop the IEP.

The IEP must be implemented or put into action within 10 school days from the date the IEP is completed and agreed to by the team.

The student's program is to be reviewed at an IEP meeting every year or more often if requested by parents/guardians or another IEP team member.

What information should be included in an IEP?

An IEP should include the student's present levels of educational performance, identification of the student's strengths and needs, measurable annual goals and specially designed instruction designed to meet the needs of the student. It should list the types of related services that will be provided, including where and how often they will be provided. It should include the tests and other methods of evaluation that will be used to assess progress. The IEP should include information related to the LRE, including the amount of time (if any) the student will not be in the general classroom and the accommodations, modifications,

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and supplementary aids and services that will be provided in the general education setting. It should include the modifications, if needed, to participate in statewide and districtwide tests. The IEP should also include supports (such as resource materials, training and equipment) that school personnel may need to implement the plan.

What if parents/guardians feel the evaluation report is not accurate?

If parents/guardians feel that the evaluation report inaccurately identifies their student either as needing special education or as being ineligible or the report is otherwise inappropriate, they may request that an independent evaluation be done by an outside party. Under certain circumstances, the school may be compelled to pay for the independent evaluation.

How often is a child to be re-evaluated?

A re-evaluation is to be conducted at least every three years, unless the student has been diagnosed with an intellectual disability, in which case the re-evaluation is conducted at least every two years. The school must seek the parents'/guardians' permission to perform the additional evaluation if the school believes additional information is needed to complete the re-evaluation.

Should the parents/guardians and school agree that a three-year re-evaluation is not needed, the parents/guardians may sign an "Agreement to Waive Re-evaluation." This is not an option for a student who has an intellectual disability.

How do parents/guardians resolve disagreements with the school?

If a parent /guardian does not agree with the IEP developed for the child or thinks that the child is not receiving a FAPE in the LRE, the parent/guardian can resolve disagreements informally by talking with the child's teacher and other school staff by phone or in person about changes that could help the child.

Parents/guardians can write to the school principal and ask for an IEP meeting to discuss any concerns. Possible concerns to address may be whether changes in the child's IEP would help, why the agreed-upon services are not being provided or why the child is not making progress. During the IEP meeting, consider discussing instructional evaluations and behavior assessments that may help

identify needed changes. Parents/guardians can request a "Permission to Re-evaluate-Consent" form, which gives the school 60 calendar days (not including summer months) to complete the re-evaluation and provide a written report.

Parents/guardians can ask the school to agree to an IEP facilitation, which is a meeting that includes a facilitator not employed by the school. IEP facilitation is voluntary and can be used by the parents/guardians and the school.

If parents/guardians and the school cannot resolve disagreements informally, there are several options to formally resolve the dispute, including filing a complaint with the state's Bureau of Special Education, going to mediation, requesting an Evaluative Conciliation Conference (ECC) or requesting a due process hearing. Additional information about when it is appropriate to file such complaints and the process to follow are available by contacting the BSE's Special Education ConsultLine at 800-879-2301. Staff at the ConsultLine also assist parents/guardians when filing a complaint and may refer them to outside agencies for assistance.

If parents/guardians file a complaint with the BSE, the Bureau has 60 calendar days to investigate the complaint and issue a report. If the BSE determines that the school broke the law, it will inform the school about what it must do to correct the problem and must follow up to ensure that the school completes the corrective action.

Parents/guardians must obtain the agreement of the school in order to go to mediation. Mediation is free, voluntary and confidential. A neutral mediator will listen to both parties in order to understand each side's position and facilitate a potential settlement. Neither school officials nor parents/guardians may bring a lawyer to the mediation session.

Parents/guardians and the school must agree to pursue an ECC. An ECC is a confidential risk-assessment of each party's position. Parents/guardians and the school are required to submit confidential memoranda and relevant documents to help the consultant understand the issues. The consultant will then conduct joint and individual conferences with the parties and/or their counsel to facilitate a potential settlement and avoid a due process hearing.

If parents/guardians request a due process hearing, they have the right to hire a lawyer to appear with them at the hearing. If parents/guardians hire a lawyer and win the case, the school will be required to pay some or all of their legal fees. (The school does not have to pay for a lawyer who goes to an IEP meeting unless the meeting has been ordered by a hearing officer. The school also does not have to pay for parents'/guardians' lawyer attending a resolution session.). The school will almost always be represented by a lawyer at the hearing. Due process

differs from other dispute-resolution opportunities in that a hearing officer decides the dispute for the parties. Throughout the due process proceedings, resolution through mediation remains available to the parties. In addition, during the proceedings the parties may settle some or all of the issues among themselves at any time. The parties may appeal the decision of the hearing officer in court.

If the school and parents/guardians agree to settle, the agreement will usually be put into writing and signed by the parties. If the agreement requires changes to the IEP, the school should hold an IEP meeting to make those changes. If the parents/guardians claim that the school has failed to follow the settlement agreement, parents/guardians can file a complaint with BSE to enforce the IEP or go to court to enforce the settlement agreement.

What if a student has a disability but does not need special education?

A student with a disability may not require specialized instruction. However, the student may require aids, related services or accommodations to afford the student an equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination. A student is entitled to Section 504 accommodations if the student has a mental or physical impairment that substantially limits one or more major life activities. Major life activities include breathing, walking, seeing, hearing, learning, thinking, speaking, eating and reading.

Parents/guardians can request a 504 plan (sometimes called a Chapter 15 plan or service agreement). A 504 plan is a document that specifies the student's disability-related needs and how the school will meet those needs.

What additional steps can parents/guardians take if they believe there is discrimination against the child because of the child's disability?

Parents/guardians can file a complaint with the Bureau of Special Education, the U.S. Department of Education's Office for Civil Rights or the Pennsylvania Human Relations Commission, as well as local human relations commissions.

Parents/guardians can always ask for a special education due process hearing to resolve an issue and ask a hearing officer to order that the school provide the child with necessary accommodations to participate in an activity or program. However, in some situations, parents/guardians can also go directly to the court to ask a judge to order the school to stop discriminatory practices.

What if a student is mentally gifted and has a disability?

A student who demonstrates characteristics of giftedness and also has a disability requiring special education is considered "dually exceptional" or "twice exceptional." Such a student must be provided with a single IEP that includes a combination of gifted and special education services.

Where can I get more information?

ConsultLine, 800-879-2301

A service of the Office for Dispute Resolution and the Pennsylvania Training and Technical Assistance Network providing parents/guardians with information about special education, gifted education and Section 504 of the Rehabilitation Act.

Disability Rights Network of Pennsylvania (DRN), www.drnpa.org, 800-692-7443

A statewide, nonprofit corporation designated as the federally-mandated organization to advance and protect the civil rights of adults and children with disabilities.

Pennsylvania Training and Technical Assistance Network (PaTTAN), www.pattan.net, 800-360-7282 (Harrisburg), 800-441-3215 (King of Prussia), 800-466-5607 (Pittsburgh)

Serves as the training and technical assistance branch of the state's Bureau of Special Education and has a website with information and publications for parents/guardians.

How Can I Find a Lawyer?

Call the Pennsylvania Bar Association Lawyer Referral Service toll free in PA at 800-692-7375 or 717-238-6715. Most counties have this same service at the local level. Check your Yellow Pages under "attorneys" for more details.