

SPECIAL EDUCATION IN ALABAMA

# *A Right*

NOT A FAVOR

ALABAMA DISABILITIES



# A Right Not A Favor

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Advocacy Program

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This manual provides information about special education law. However, legal information is not the same as legal advice - the application of law to an individual child's specific circumstances. ADAP recommends you consult a lawyer to ensure this information, and your interpretation of it, is appropriate to your particular situation.

## Alabama Disabilities Advocacy Program

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The Alabama Disabilities Advocacy Program (ADAP) is part of the nationwide federally funded protection and advocacy (P&A) system. ADAP provides legal advocacy services to Alabamians with disabilities to protect, promote, and expand their rights. ADAP's vision is one of a society where persons with disabilities are valued, exercise self-determination through meaningful choices, and have equality of opportunity. ADAP's advocacy efforts are governed by these values:

- Persons with disabilities should have the same opportunity to participate in the community as persons without disabilities.
- Persons with disabilities have the right to reasonable accommodations needed for full participation in their communities.
- Persons with disabilities have the right to be afforded meaningful choices and to make informed decisions.

ADAP provides information and referral services, public education programs, and individual case advocacy services.

### **Information and Referral**

Anyone may call ADAP for information and referral services related to disability legal issues.

### **Education and Training**

Individuals or groups may request disability rights and advocacy training. Requests are considered in light of ADAP's annual priorities and its resources for public education programming.

### **Individual Case Advocacy**

ADAP provides individual case advocacy services according to the agency's priorities and case selection criteria.



## Introduction

Children with disabilities in Alabama have a legal right to free and appropriate programs of special education and related services. State and federal law require teachers and school administrators to work together with parents to create individualized education programs to meet the unique needs of children with disabilities. Thus, when schools provide special education, they do so not out of kindness, but because children with disabilities are entitled by law to these services. In other words, **SPECIAL EDUCATION IS A RIGHT, NOT A FAVOR.**

The purpose of this manual is to help parents understand their children's rights to such services, learn how to advocate for those rights, and understand how best to partner with school personnel, so that when their children graduate from school, they are prepared to lead productive and independent adult lives, to the maximum extent possible.

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# Chapter 1

## Evaluation and Eligibility



For almost forty years, federal law has required public schools to provide special education services to all children with disabilities who are eligible to receive them. The name of the law under which these services are provided to children today is the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004).

IDEIA 2004 is the latest version of the law that Congress first enacted in 1975, the Education for All Handicapped Children Act (EHA or Public Law 94-142). In 1983, Congress amended the EHA. In amendments made to the EHA again in 1990, the name of the law was changed to the Individuals with Disabilities Education Act (IDEA). The IDEA was amended in 1997 and again in 2004 when the name was changed to IDEIA. For ease of reading, IDEIA 2004 will be referred to simply as IDEA in this guide.

### How can services provided under the IDEA help my child in school?

One of the purposes of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that includes special education and related services - designed to meet their unique needs - so they are prepared for further education, employment, and independent living after graduation.

Another important purpose of the IDEA is to ensure that the rights of children with disabilities and their parents are protected.

### What is a free appropriate public education (FAPE)?

Your child is receiving a FAPE if she's provided with special education services designed specifically to meet her unique needs and if the services are reasonably calculated to allow her to receive educational benefit. These services are laid out annually in your child's Individualized Education Program (IEP).

For a special education program to be appropriate - to meet the IDEA's FAPE standard - it must provide your child the opportunity to interact with like-age peers to the maximum extent appropriate. This is called the least restrictive environment (LRE) for your child. The IDEA requires an IEP Team to begin the LRE decision-making process for your child with the presumption that 1) she will spend all of her day in a regular education classroom with an array of appropriate supports and services designed to enable her to participate successfully and 2) she will be removed from that setting only when her IEP cannot be successfully implemented there.

### At what age are children with disabilities entitled to special education services?

Eligible children with disabilities from birth through age 2 are provided services by Alabama's Early Intervention System, part of the Alabama Department of Rehabilitation Services.

Local public school systems are responsible for providing special education to eligible children from ages 3 to 21.

Your child's right to special education services typically ends when she receives either a regular Alabama High School Diploma or reaches the age of 21, whichever comes first.

Children with disabilities who have not earned the Alabama High School Diploma and who have not reached their 21st birthday by August 1st are entitled to begin and complete the new school year even if it means that they receive more than 12 years of instruction.

The extra years of schooling that are available to older youth can help prepare them for further education, successful independent living, and employment. Encourage your child to stay in school for those extra years. Think creatively with her about how that time can best be used to help her become ready for life as an adult.



Local public school systems are responsible for providing special education to eligible children from ages 3 to 21.



### **What children are eligible for special education and related services?**

To be eligible for special education and related services under the IDEA, your child first must be identified as a “child with a disability.” That is, your child must meet the federal and state eligibility criteria for at least one of these disability categories:

1. Autism
2. Deaf-Blindness
3. Developmental Delay (young children ages 3-9)
4. Emotional Disability (formerly Emotional Disturbance)
5. Hearing Impairment (including deafness)
6. Intellectual Disability (formerly Mental Retardation)
7. Multiple Disabilities
8. Orthopedic Impairment
9. Other Health Impairment
10. Specific Learning Disability
11. Speech or Language Impairment
12. Traumatic Brain Injury
13. Visual Impairment (including blindness)

Second, as a result of her disability/ies, she must also need specially designed instruction and related services in order to benefit from the school’s educational program.

### **What is the purpose of a special education evaluation?**

An evaluation has two purposes.

First, an evaluation determines if your child is a child with a disability as defined under the IDEA and thus eligible for special education and related services.

Second, the evaluation identifies the nature and extent of the special education and related services that your child needs.

### **How do I get a special education evaluation for my child?**

If your child is struggling in school and you suspect she may have a disability, refer her for evaluation.

Your evaluation referral does not have to be in writing. However, it’s better to put your referral in writing so you have a record of it. In a dated letter, set out the reasons why you believe your child has a disability which is interfering with her ability to learn or conduct herself appropriately in school and refer her for a special education evaluation. Send the letter to your school district’s special education coordinator.

Keep a copy of the letter. (See the Appendix for a sample referral letter.)

The IDEA requires a school district to seek out and evaluate a child suspected of being a “child with a disability” who goes to school in that district whether she attends public or private schools. This is often referred to as a district’s “Child Find” obligation.

### **After a referral for evaluation is made, what happens next?**

In a timely manner after the evaluation referral is made, a group of qualified professionals (or an IEP Team) must meet and review the referral to decide if your child should be evaluated. You are an important member of this group.

Follow up with the district’s special education coordinator a few days after sending your referral letter. Ask him when the Team will meet to review your referral for evaluation, reminding him that under federal and state law your referral must be addressed in a timely manner. Too often, this meeting gets delayed or put off; follow up as necessary to get it scheduled. If your child is eligible for services, every day that the process is delayed means that she’s not getting the services she needs to succeed in school.

At the referral meeting, you and other Team members will consider the referral, reviewing information collected from the school and provided by you. The Team may refuse to evaluate your child if it doesn’t suspect that she has a disability or that she needs special education. If the Team refuses to evaluate your child, it must provide you written notice, explaining, among other things, why it refuses to conduct the evaluation and the information that it used to make that decision. You may challenge the Team’s decision by using the conflict resolution mechanisms provided for in the IDEA (see Chapter 5 for more information).

If the Team determines she should not be evaluated, your child should be considered for eligibility under Section 504 (see Chapter 6 for more information) or referred to your school’s Problem Solving Team (PST).

If the Team determines that your child should be evaluated, the school must get your written consent for the evaluation. Typically, you will sign the necessary evaluation consent forms at that referral meeting. It is important that you sign evaluation consent forms as soon as possible; the evaluation timeline that your child’s school must follow (see below) does not start until it receives your signed consent to evaluate.

### **Can my child’s school refer her for evaluation?**

Your child’s school may also make an evaluation referral. Indeed, if your child’s school suspects she may be a “child with a disability” (that is, she meets one of the 13 disability definitions and needs special education) then the school must refer her for evaluation, providing you the appropriate written notice about the meeting described above.

Regardless of who initiates the referral, your child cannot be evaluated without the matter being discussed in a referral meeting and without your written consent.



**If your child is struggling in school and you suspect she may have a disability, refer her for evaluation.**



### **Do I have to give written consent to have my child evaluated?**

For initial evaluations, whether you or your child's school start the process, you must provide written, informed consent before the school can assess your child.

If you refuse to consent to an initial evaluation, or if you don't respond to a request for consent, the school may choose to use the IDEA's mediation and due process procedures to pursue an evaluation of your child. However, these override procedures may not be used to force your consent if your child attends private school or is home-schooled at your expense.

When you consent to have your child evaluated, you are not consenting to have her receive special education and related services; separate written consent is required from you before the school can provide your child with services.

### **What is a Problem Solving Team?**

A school's Problem Solving Team (PST) works to improve general education programming to help struggling students so that referral to, and placement in, special education programming is not necessary. PSTs used to be called Building Based Student Support Teams (BBSSTs) in Alabama.

Under Alabama law, before a child is evaluated for special education eligibility, pre-referral intervention strategies must be implemented in the general education program and monitored by a school's PST for a minimum of eight weeks.

These strategies could include, but are not limited to, interventions such as a behavior plan, remedial school work, tutoring sessions, counselor sessions, etc. If these interventions are determined to be unsuccessful, then the child can be referred for evaluation.

### **Do students always have to go through these pre-referral interventions before being evaluated?**

No, Alabama law allows for certain important exceptions to the pre-referral process.

First, the law allows for these interventions to be waived for a child who:

- has severe problems that require immediate attention;
- is three, four, or five years old and hasn't been in kindergarten;
- has only articulation, voice, or fluency problems;
- has a medical diagnosis of traumatic brain injury; or
- has been referred by her parent for evaluation.

Second, Alabama law allows for these interventions to be done at the same time as the special education evaluation process. So, your child can be undergoing evaluation for special education eligibility and be provided the pre-referral interventions by the PST at the same time.

When you meet with your child's IEP Team to discuss your evaluation referral, remind the Team that PST interventions can be done at the same time as the special education evaluation process. When these interventions are done at the same time, they produce a wealth of diagnostic information that can be used by your child's IEP Team to determine special education eligibility and to identify your child's educational needs.

The federal Office for Special Education Programs (OSEP) addressed the use of learning programs like Alabama's PSTs in an important memo sent to state education directors in January 2011. OSEP acknowledged the value of such efforts in addressing the learning needs of students, including students with disabilities. However, OSEP cautioned schools about using such activities to delay or deny a special education evaluation. If a school suspects that a child may have a disability that would make her eligible for special education services, the district must evaluate her. OSEP noted that a district may deny an evaluation if it does not suspect that the child has a disability. However, it must provide written notice to a parent and explain its reason for denying the evaluation.

### **What evaluations will my child be given and who will pay for them?**

Your child must be evaluated in all areas of suspected disability. When evaluations are conducted, it's important that all areas of your child's functioning be considered, including health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Alabama law lays out the minimum evaluations that have to be given to determine eligibility for special education services. (See the Appendix for the relevant section of the Alabama Administrative Code.) However, it's up to the IEP Team to determine if other evaluations are needed to fully assess your child so that there's a clear understanding of your child's disability and its impact on her school needs.

Often a child's IEP Team focuses only on one aspect of her learning difficulties, missing other factors that may affect her ability to learn. For example, your child may be identified as having a specific learning disability but, in the evaluation process, her attention difficulties or emotional problems were ignored. If those disability-related needs are not identified and planned for, how can your child succeed in school? Make sure your child's IEP Team fully discusses - and evaluates - all factors that may be affecting her ability to learn.

Your child's school must arrange and pay for any evaluations needed to determine eligibility and the nature and extent of the special education and related services your child may require.

The evaluation process includes the administration of assessments and testing, observations, and collecting information from any available outside professionals. And, of course, information from you - her parent!

*(Continued on page 11)*

## Children in Private Schools

A school district must identify, locate and evaluate all children within the district who may need special education services, including those enrolled by their parents in private schools. This process is often referred to as Child Find.

The school district where a private school is located is responsible for Child Find for students in that private school - not the district where the students live. Private schools include religious schools. School districts must consult with private school officials and representatives of parents of parentally-placed private school children to ensure that the Child Find process treats such students equitably and that parents, teachers, and private school officials are informed about the process. The Child Find evaluation procedures, standards and time lines for private school students must be the same as those used for public school students in the district.

Children enrolled by their parents in private schools do not have an individual right to receive the special education and related services they would receive if enrolled in a public school.

Instead, the IDEA requires a “Services Plan” be developed and implemented for each private school child with a disability who has been identified to receive special education and related services by the school district in which the private school is located.

A Services Plan describes the specific special education and related services being offered to a private school child - what type of services will be provided, where they will be provided, and by whom.

A Services Plan is different from an IEP because it doesn’t necessarily plan for the full range of special education and related services needed by a child with a disability. A Services Plan is not developed in the same way that an IEP is developed; a child’s parents and her teachers have little say in determining the services - if any - to be provided to a parentally-placed private school student. The school district must develop the Services Plan with timely and meaningful input from private school officials and from representatives of parents of parentally-placed children in the district. In working with these representatives, the school district must discuss:

- types of special education services;
- how services will be allocated if there is not enough money to fund services for all private school children;
- how and when Services Plan decisions will be made.

In the end, the school district has the final authority to make decisions about all aspects of the Services Plan being offered. Think of a Services Plan as “IEP Lite.”



Children enrolled by their parents in private schools do not have an individual right to receive the special education and related services they would receive if enrolled in a public school.

Evaluations must not discriminate by race or culture and must be given in your child's primary language.

All tests must be selected and given so that your child's suspected disability does not affect the test results, unless a particular test is designed to measure the nature or degree of the disabling condition. For example, the intelligence of a child with visual problems cannot be evaluated by means of a written test. However, if the child is being tested to determine if a visual problem exists, a written test may be appropriate.

No single assessment may be used as the sole reason for determining whether your child has a disability or for determining the appropriate educational program for her.

As part of the evaluation, professionals may observe your child in a variety of settings and interview individuals who know and/or work with her.

If you provide the Team any assessment information from private medical or mental health professionals who treat your child, this information must be considered in making eligibility decisions.

### **How long does the evaluation process take?**

Your child's school has 60 calendar days from the date you provide written consent to complete all necessary evaluations.

No more than 30 calendar days after the evaluations are completed, your child's IEP Team must meet and determine whether your child is eligible for services under the IDEA.

If your child is found eligible, then an IEP meeting must be held to write her IEP no more than 30 days after that. To save time, it's common for the eligibility decision and IEP planning to be done at the same meeting.

Your child's IEP must be implemented as soon as possible after that initial IEP planning meeting.

All these timelines run regardless of any interruptions in the school year, including summer vacation.

Let's say you refer your child for an evaluation on May 1st. In a timely manner, you and the rest of your child's IEP Team meet and decide that your child should be evaluated and you sign evaluation consent forms. School officials then tell you that they will begin the evaluation process at the start of the new school year in the fall.

Can it do that? No.



Your child may be eligible under the IDEA even though she has not been retained in a course or grade and is advancing from grade to grade.



The IDEA requires that your child be reevaluated at least once every three years.

| Day 1                                                          | No later than the 60th day        | No later than the 90th day               | No later than the 120th day                                         |
|----------------------------------------------------------------|-----------------------------------|------------------------------------------|---------------------------------------------------------------------|
| Parent signs paperwork consenting to testing. Timeline starts. | All evaluations must be complete. | Team must meet to determine eligibility. | IEP must be written and implemented as soon as possible afterwards. |

From the date you sign the consent forms, your child's school has, at the most, 120 calendar days to complete the evaluation process, determine eligibility, and write an IEP for her if she's eligible.

### Why is this timeline important?

If your child is eligible for services, every day that the eligibility determination is put off means one less day that your child is receiving the help she needs!

### How is my child's eligibility under the IDEA decided?

Your child's eligibility must be determined at a meeting attended by you and a group of qualified professionals (or your child's IEP Team). As you prepare for your child's eligibility meeting, familiarize yourself with the definitions, required evaluations, and eligibility criteria for the IDEA's 13 disability categories. (See the Appendix for the relevant sections of the Alabama Administrative Code.)

At the meeting, the Team must determine:

- if your child is a child with a disability,
- your child's educational needs,
- your child's present level of academic achievement and related developmental needs, and
- whether your child needs special education and related services.

The Team considers these four things by drawing upon the information gathered through the evaluation process.

The Team must carefully consider the information presented to it and document the information in a form called "Notice and Eligibility Decision Regarding Special Education Services." This form must include documentation of the eligibility determination. Is your child eligible or not? Under which disability category has she been found eligible? What information was used to make this determination? The form must include each Team member's signature indicating whether she agrees with the conclusions. The school must provide you a copy of the form.

If your child is found eligible to receive special education services, an IEP must be written and implemented for her within 30 calendar days. If she is not found eligible and you disagree with that decision, you may challenge the Team's finding by using the IDEA's conflict resolution mechanisms. (See Chapter 5 for more information.)

### A few points to remember about IDEA eligibility:

- To be eligible for special education and related services under the IDEA, your child must fit the eligibility criteria for at least one of the IDEA's 13 disability categories and, as a result of her disability, need specially designed instruction and related services in order to benefit from the school's educational program.
- Your child cannot be found eligible under the IDEA if she has lacked appropriate instruction in reading or math or has limited English proficiency.
- If your child has one of the identified IDEA disabilities, but only needs related services - and not specialized instruction - then she cannot be found eligible under the IDEA. However, she might be eligible for services under Section 504. (See Chapter 6.)
- Your child may be eligible under the IDEA even though she has not been retained in a course or grade and is advancing from grade to grade.



Reevaluations do not necessarily mean more testing for your child.

One of the IDEA's disability categories is called Emotional Disability (ED). ED is not a psychiatric diagnosis. Rather, it's an eligibility term used in the IDEA to describe children who may have a psychiatric disorder (like depression, bipolar disorder, anxiety disorder, etc.), or who may have other emotional problems. Sometimes, children with emotional and mental health challenges may be eligible for services because of those challenges under the category of ED or Other Health Impairment (OHI).

Eligibility Teams sometimes may focus on only your child's grades when it is deciding whether her educational performance is affected by her disability. This is illegal. Under Alabama law, educational performance includes your child's academic, social/emotional, and/or communication skills.

If you believe your child has emotional or behavioral issues that are affecting her educational performance, the school has to assess those issues as part of the eligibility and IEP planning process. This assessment may require your child's school to arrange and pay for psychological or psychiatric evaluations.

### What is a reevaluation?

Once an initial evaluation has been held and eligibility determined, any later evaluation is considered to be a reevaluation.

Reevaluations may be done to consider your child's continuing eligibility status - does she continue to be eligible for services and, if so, under which disability category?

Reevaluations may also be done to ensure that your child's IEP Team has up-to-date information on her educational needs so that it can plan better for her.



You have a right to an independent educational evaluation (IEE) at your school district's expense if you disagree with any of the district's individual evaluations of your child.

### When are reevaluations done?

The IDEA requires that your child be reevaluated at least once every three years.

A reevaluation is also required before your child can be determined no longer eligible for special education services and before her eligibility category is changed. However, no reevaluation is required before your child's eligibility for services under the IDEA terminates at age 21 or because she graduates from school with an Alabama High School Diploma.

A reevaluation may be conducted anytime your child's school determines that her educational needs warrant a reevaluation or if you or one of her teachers request one. However, a reevaluation cannot occur more than once a year, unless you and the school district agree otherwise.

### Why would I want to request a reevaluation?

If your child's current special education program is not working, a reevaluation may help identify the problem and what should be done about it by revealing changes to your child's academic, functional and developmental strengths and needs. (See the Appendix for a sample letter requesting a reevaluation.)

### What does the Team do with reevaluation results?

Depending on the reason for the reevaluation, the Team will review the collected information and:

- Consider your child's continuing eligibility for special education - does she continue to be eligible for services and, if so, under which disability category?

and/or

- Consider whether any additions or modifications to your child's special education program are needed to enable her to meet the measurable annual goals set out in her IEP and to participate, as appropriate, in the general education curriculum.

### Can a decision to reevaluate happen outside of a meeting?

No. Just like in an initial evaluation, the Team must decide to do a reevaluation at a meeting.

### If I ask to have my child reevaluated, can the school refuse?

Yes. But if your child's school refuses to conduct a reevaluation, it must explain in writing why it refuses to conduct the reevaluation and your rights to contest that decision.

### Does a reevaluation mean that my child will be tested?

Reevaluations do not necessarily mean more testing for your child. A reevaluation can be simply a review of presently existing data and information (classroom observations, local and state assessments, grade transcripts, special education testing, etc.).

However, after review, the IEP Team might decide additional data are needed to determine continued eligibility or to identify educational needs. In that case, testing will need to be conducted.

If the IEP Team decides that no additional data are needed to effectively program for your child or to continue her eligibility for services, then no testing will be required. A written record of this decision and the reasons for it must be made and added to your child's school records and provided to you.

### **Do I have to give written consent before my child undergoes further testing in a reevaluation?**

A school district must give you written notice before testing your child and must make reasonable efforts to obtain your written consent before it conducts reevaluation assessments on your child.

If you refuse further testing, the district may, but is not required to, pursue the reevaluation through mediation or due process.

If the district makes reasonable efforts (at least two attempts) to obtain your consent and you do not respond, it can go ahead and conduct any necessary reevaluation assessments.

### **How do schools document reasonable efforts to contact parents?**

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to you and any responses received; and
- Detailed records of visits made to your home or place of employment and the results of those visits.

The school is not required to do all of these things to have made a reasonable effort. Some combination of them is enough to say a reasonable effort was made. Make sure your child's school always has up-to-date contact information for you (phone numbers, email, physical and mailing address, etc.).

### **When is my consent not required for an evaluation or reevaluation?**

Your consent is not required for the IEP Team to simply review existing data as part of an evaluation or a reevaluation. Your consent is also not required before the school administers a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

### **What if my child is found ineligible for special education services as a result of a reevaluation?**

If you disagree with the Team's decision, you may challenge its finding by using the IDEA's conflict resolution mechanisms.

Regardless, the evaluation Team should consider if your child could be eligible for services under Section 504.



Once a year, your child's school must provide you a copy of the IDEA's procedural safeguards.



Students not eligible under IDEA or Section 504 should be referred to your school's Problem Solving Team (PST) for additional assistance and monitoring.

### **Do I have to give written consent before my child receives special education and related services?**

Yes. You must provide written consent before your child's school can provide her with services.

If your child has been found eligible for services under the IDEA and you do not agree to have her receive services, or if you do not respond to a request for consent to provide services, the school may not use the IDEA's mediation or due process procedures to try to compel you to provide consent.

### **Can I withdraw my consent for special education services at any time?**

Yes. If you decide to withdraw consent, you will need to do so in writing. Your child's school must then provide you with prior written notice (see Chapter 5), advising you that it will be terminating services to your child.

If you later want your child to receive special education again, your child's school will treat your request for services as a request for an initial evaluation, as described previously. Depending on the data available, new testing might not be required for an IEP Team to determine whether your child qualifies again for services.

### **Does my child's school have to provide me information about my child's rights under the IDEA?**

Once a year, your child's school must provide you a copy of the procedural safeguards available to you as a parent of a child with a disability under the IDEA.

A copy must also be given to you:

- upon your child's initial referral for special education evaluation or your request for evaluation;
- upon receipt of the first state administrative complaint and due process complaint in a school year that you may file;
- upon a decision to change the placement of your child because of a violation of code of conduct; and
- upon your request.

### **What is an independent educational evaluation?**

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for your child's education.

You have a right to an IEE at your school district's expense if you disagree with any of the district's individual evaluations of your child.

If you request an IEE, your child's school must provide you with information about where an IEE may be obtained. It must also provide you

with the school district's evaluation criteria. While the district may provide you a list of suggested evaluators, you are not required to use any proposed by the district for the IEE.

### **Does my child automatically get an IEE if I ask for one?**

Not necessarily. If you request an IEE, your child's school district must, without unnecessary delay, provide the IEE at its expense or file a due process hearing request to show that its evaluation was appropriate and adequate.

If the final decision in the due process hearing is that the school's evaluation is appropriate, you still have a right to an IEE but not at the school's expense. Also, if you obtain an IEE that does not meet school district criteria, you, not the school, will have to pay for it.

### **How many IEEs can I request?**

You have a right to one IEE at public expense each time your child's school conducts an evaluation with which you disagree.

### **How do I request an IEE?**

Like any communication between you and your child's school, it's a good idea to note that you are seeking an IEE in a dated letter. Send the letter to your school district's special education coordinator. (See the Appendix for a sample letter requesting an IEE.)

### **When I request an IEE, do I have to explain why I disagree with the school's evaluation and why I want the IEE?**

No. The school district may ask for an explanation, but you are not required to give one. If you choose not to give an explanation, the school district may not delay providing the IEE at public expense or initiating a hearing.

### **Are there any conditions or timelines I have to meet in order to get an IEE?**

Aside from meeting the school criteria (noted above) the district may not impose any other conditions or timelines related to obtaining an IEE.

### **Who else can request an IEE?**

A due process hearing officer may request an IEE as part of a due process hearing. If so, the cost of the evaluation must be at public expense.

### **How are the results of an IEE used?**

The results of an IEE must be considered by the school in any decision made with respect to the provision of FAPE for your child whether the IEE was paid for by you or the public school.



# Chapter 2

## Writing your Child's Individualized Education Program (IEP)



### What is an Individualized Education Program (IEP)?

Think of an IEP as a blueprint of your child's education for a year. The IEP sets out goals that your child will work towards during the year. It lists the services the school system has committed to provide to help her achieve these goals. It also explains how the school will track her progress towards reaching these goals and how that progress will be reported to you.

### How can you, as a parent, make sure that the IEP Team writes an effective IEP for your child and that the school follows the IEP?

- Understand your role in the IEP process.
- Never stop learning about your child's disability and her school needs.
- Understand the rights you and your child have under state and federal law.
- Learn how to effectively share your knowledge and concerns about your child with the school system.

### Who writes my child's IEP?

Your child's IEP is written by a team of teachers and school personnel along with the person who knows her best - you!

An IEP Team is made up of the following persons:

- You - the child's parent(s).
- Your child, whenever appropriate. While your child may always attend an IEP meeting, if the purpose of an IEP meeting is to consider post-high school goals and transition services, the school must invite your child to the meeting. If she doesn't attend, the school must take other steps to ensure that her preferences and interests are considered by the Team in its IEP planning.
- Someone who represents the school district, called the Local Educational Agency (LEA) representative in the IDEA. This person must be able to provide or supervise the provision of special education services. She must also have knowledge of the general education program and the special education programs and services the district can provide your child. The LEA representative must have knowledge of the district's resources and have the power to commit those resources to support the IEP that is being developed by the Team. Often the LEA representative will be the district's special education coordinator, although the district may name another school employee.
- At least one of your child's special education teachers or related service providers.
- At least one of your child's general education teachers, if your child is, or may be, participating in the general education environment.
- Someone who can read, interpret and understand the results of tests and evaluations. This information will help the IEP Team write IEP goals and determine what supports and services your child will need to achieve her goals. Often, the district's psychologist or psychometrist will fill this role, but it may be filled by the LEA representative, special education teacher or provider, or the general education teacher depending on the experiences and credentials of the individuals.
- When post-secondary goals and transition services are to be discussed, the school must invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.



The IDEA specifically requires that the special education teacher (or related service provider) and the general education teacher who attend your child's IEP meeting must be her teachers - not just any special education- or general education teachers who are available during the time the IEP meeting is to take place.



Your child's IEP team must revise her IEP to address any lack of expected progress toward her annual goals and in the general education curriculum.

- However, the school must get your consent (or the consent of your child if she's 19 years or older) to do so.
- When children are transitioning out of Part C/Early Intervention (EI) services, a parent may request that a representative of the EI system be invited by the school to the initial IEP Team meeting. This EI staff member can help ensure the smooth transition of children from Part C/Early Intervention services to Part B/public school programming.
- Other people who you or the school choose to invite who have special knowledge that would help the IEP Team write your child's IEP: physical therapists, occupational therapists, speech pathologists, vocational rehabilitation counselors, outside mental health professionals, parent advocates or others.

You are not required to notify the school district if you want to have someone like an outside expert or parent advocate accompany you to the IEP meeting. However, giving school districts the courtesy of knowing who might attend with you will help foster the spirit of collaboration that the IEP process needs to succeed. If an attorney is attending the IEP meeting with you, she must notify the school district so that the district has the opportunity to be represented by counsel as well.

### When is my child's IEP written?

IEPs must be written at least annually. Typically, IEP meetings are held in the spring, at which time the next year's IEP is written.

However, this is not the only time that an IEP meeting may be held. Parents or school personnel should request an IEP meeting whenever they believe that the IEP needs to be reviewed or revised. One reason why you should review an IEP during the school year is if your child is not making progress on her IEP goals or is making progress in some areas, but not in others. Your child's IEP team must revise her IEP to address any lack of expected progress toward her annual goals and in the general education curriculum. Under Alabama law, the school must have a meeting within 30 calendar days of one being requested. (See the Appendix for a sample letter requesting an IEP meeting.)

If your child has been newly identified as eligible for special education services, an IEP meeting must be held to develop your child's initial IEP within 30 days of the eligibility decision.

### Will I be notified about my child's IEP meeting?

The IDEA requires schools to give parents reasonable advance notice of the purpose, time, and place of the IEP meeting. This notice must also tell you who the school has invited to attend the meeting. The IEP meeting must be held at a time and place agreeable to both you and the school. If you cannot attend the actual IEP meeting, the school must find other ways to make sure that you participate in writing your child's IEP. For example, some school districts use conference calls to include parents in IEP meetings.

Your participation at an IEP meeting is so important that the school must make repeated and well-documented attempts to notify you of the meeting and to seek your agreement to attend before it may hold an IEP meeting without you.

### What happens at an IEP meeting?

Typically, the LEA representative leads the IEP meeting, but any member of the IEP Team may take on this role.

No matter who leads the meeting, parents are equal members of the IEP Team. If you have any questions, suggestions or comments - speak up! If you get overwhelmed or do not understand what is going on, say so.

The following is a general guide for what happens at an IEP meeting and what your child's IEP must include.

- **Introductions**

IEP Team members introduce themselves and briefly state their role in the IEP process.

- **At least once a year, parents must be given a copy of the IDEA's procedural safeguards notice**

The school must give you a handout that explains your rights under the IDEA. Make sure that you read the handout and ask questions if there is something you do not understand.

- **Develop the student profile**

The IEP Team should first develop your child's student profile. The student profile should address your child's academic, functional, and developmental strengths and weaknesses, the results of recent tests or evaluations, and the results of state or district-wide tests or assessments.

It should discuss how your child's disability affects her involvement and progress in the course of study that children her age are typically learning and her involvement in school programming as a whole.

It should describe your child's personality, interests, and goals.

If you have any concerns about your child, those concerns should be noted in the profile.

- **Discuss transition plans**

Transition plans and services are designed to help you, your child, the school, and other agencies plan for your child's move from the school setting to adult life in the community.

A transition plan must include appropriate measurable post-high school training/education, employment, and community and independent living goals.



The IEP meeting must be held at a time and place agreeable to both you and the school.



The development of a transition plan should be guided by your child's goals, interests, and dreams; therefore she must play a key role in the planning process.

Your child's goals should be based on her interests and needs and the results of age-appropriate transition assessments. A transition plan must also note the transition services (including courses of study) needed to assist your child in reaching those goals.

You, your child and the rest of the IEP Team have to consider many factors to do effective transition planning. Because so many post-high school goals are impacted by decisions related to your child's high school course of study, it's often useful to start transition planning at the IEP meeting held in the spring of your child's 8th grade year - right before she starts high school. However, the IDEA requires that your child's IEP Team must start transition planning when it is developing the IEP that will be in effect when your child turns 16.

Your child should take an active role in answering questions like these:

- What are the post-high school outcomes your child is seeking:
  - Will she attend college or a post-high school vocational school?
  - Will she work in supported employment or get a competitive job?
  - Will she live independently in the community, a group home, or continue to live at home?
- What coursework will she need to take to achieve her post-high school goals?
- What other learning experiences or training will she need in order to achieve the post-high school outcomes? Will she need assistance with such transition areas as: job placement, college supports, money management, personal management, living arrangements, transportation, medical needs, community participation and advocacy/guardianship?
- Will she need help from other agencies to carry out these plans?

The development of a transition plan should be guided by your child's goals, interests, and dreams; therefore she must play a key role in the planning process.

After drafting each transition goal, the IEP Team must describe the types of instruction and services that are necessary to reach the goal, including any necessary community experiences or job development components.

- **Describe your child's present level of academic and functional achievement - how is she doing now?**

Everything that gets developed in your child's IEP - her annual goals, the special education and support services she's going to be provided, and her placement (where she's going to be taught) - depend on a good understanding of how your child is performing right now academically and functionally.

For more information on transition planning see Chapter 3.

What are academic and functional skills? Academics are just what they sound like: the subject areas taught in schools like reading, writing, math, science, social studies, art, etc. Functional skills cover a broad range of needs like self-help skills, social/emotional skills, behavior, sensory skills, communication skills, mobility, and vocational skills. An IEP must address all areas of development that affect your child's school performance - both academic and functional.

It's important to write clear and thorough statements of your child's present level of academic and functional achievement. These statements are the foundation of the IEP.

Your child's present levels of achievement should be written in concrete terms that indicate the data or information being used. In describing how your child is doing, these statements should explicitly indicate your child's performance ability and not merely state something general like your child is performing "below grade level" or "on grade level." The information that could be used to determine your child's present level of achievement includes the results of classroom tests and assignments, evaluation information, statewide assessments, or observations made by you, your child's teachers and other school personnel. The statements should explain how your child's disability affects her involvement and progress in the general curriculum.

- **Focus on closing the gap between where your child is now and where she should be.**

How your child is doing right now needs to be viewed in relation to the expectations we have for children in her grade and at her age.

Let's say you have a child going into sixth grade. What are sixth grade students expected to be able to do by the end of the year in each of the state's required subject areas? Given what the Team knows about your child's present academic skills, what special education and support services does she need to help her achieve those grade level expectations **or** to make meaningful progress in closing the gap between her abilities and grade-level expectations?

These grade level expectations are laid out in Alabama's courses of study. These courses of study are broken down by subject and by grade and are available on the website of the Alabama State Department of Education (ALSDE). If you don't have access to the internet and want to review the courses of study, ask your school for help.

- **Develop goals - what should she be doing by the end of the school year?**

Once the IEP Team has determined your child's present levels of academic and functional performance, it will use this information to write appropriate annual goals for her.

Annual goals must be reasonable - given your child's present levels of achievement, can she reasonably accomplish the goals in one year?



The IEP should cover all areas of development that affect your child's educational performance.



Special education services are defined as the specially designed instruction that your child requires to address her individual needs.

Remember, IEP goals don't have to be limited to just traditional academic subjects. For instance, if your child's disability is affecting her behavior, the IEP Team should include behavior goals and strategies as well.

It is important that the goals be measurable so that your child's progress can be tracked by the school and reported to you. The goals should state a specific number or percentage increase that your child should improve during the school year. Goals like "improve in math" or "have fewer detentions" are not appropriate.

- **Develop benchmarks**

Benchmarks are the individual steps or milestones that your child is expected to reach as she works toward her annual goals. Generally, three or four benchmarks are written for each of your child's goals. Like the annual goal, these benchmarks must be measurable.

Under federal and state law, benchmarks are required only for students participating in the Alabama Alternate Assessment (AAA). Some school districts, under their own policies, require benchmarks for all children receiving special education services. Some districts leave it up to the IEP Team to decide whether benchmarks should be written for a child who is not participating in the AAA. Check your local board policies for more information, but benchmarks are an excellent way to monitor progress throughout the school year and it will only benefit your child to include them in the IEP.

- **Determine appropriate special education services**

Special education is defined as the specially designed instruction that your child requires to address her individual needs. In turn, specially designed instruction means adapting, as appropriate, the content, methodology, and delivery of instruction provided to a child.

Since each child is unique, specially designed instruction means education that is individually developed to address your child's needs that result from her disability.

- **Determine appropriate supplementary aids and services**

Supplementary aids and services are supports that are provided in general education classes or other education-related settings to facilitate your child's education. Some examples include the use of a para-professional, training for school personnel on matters related to your child's learning needs, assistive technology devices, or modifications to the regular curriculum. These aids and services must also address your child's ability to participate in extra-curricular activities. It is important to make sure that the supplemental aid is going to help your child in the long run.

- **Determine if program modifications are needed**

The regular general education curriculum may need to be modified to meet your child's needs. Once again, it is important that any modifications be for the long term benefit of your student and not merely to make it easier for your child or the teacher.

- **Discuss the need for accommodations**

Accommodations don't change what is being taught. Rather, they change how material is presented or tested. Some examples of accommodations include large print books, highlighted text, reformatting assessments, and special seating.

- **Determine appropriate related services**

Some children with disabilities need developmental, corrective, and other supportive services in order for them to be able to benefit from the special education programming they are receiving.

These services are called related services. Related services under the IDEA include, but are not limited to, such things as:

- Transportation
- Speech-language pathology and audiology services
- Interpreting services
- Psychological services
- Physical and occupational therapy
- Recreation (including therapeutic recreation)
- Social work services
- Individualized school nurse services
- Counseling services (including rehabilitation counseling)
- Orientation and mobility services
- Medical services (for diagnostic/evaluation purposes only)
- Early identification and assessment of disabilities

Related services do not include a medical device that is surgically implanted, or the replacement of such device.

Related services identified in your child's IEP cannot be denied or limited because they would be inconvenient or costly to a school district. If a district cannot provide the service itself, it must arrange for another agency or person to provide it. In either case, the service must be provided without charge to you.

- **Consider the need for assistive technology**

Assistive technology (AT) can help children with disabilities participate more independently in school and can help them access and progress in their coursework. AT can be low tech (ex. pencil grips) or high tech (ex. augmentative communication devices or touch screens).

An AT device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. (The term does not include a medical device that is surgically implanted, or the replacement of such device.)

An AT service is any service that assists in helping select, obtain, or use an AT device for a child. AT services can include:



Advocate for a broad, varied and rigorous data collection program to get the best information possible on your child's progress on her IEP goals.

- Evaluating a child's AT needs
- Purchasing, leasing, or otherwise acquiring an AT device
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing AT devices
- Coordinating and using other therapies, interventions, or services with AT devices
- Training for the student or her family on the AT device
- Training for school staff who interact with the child using the AT device

The IDEA requires each child's IEP team to consider whether she requires AT devices or services to receive a FAPE. AT devices or services must be considered for all students, not just students with certain disabilities.

If the IEP Team is uncertain if your child needs AT, the Team should pursue an AT evaluation to see whether your child would benefit from AT and, if so, what type of AT is appropriate. The school district is not required to provide a student with the best available AT device if there are other options available that will equally address the student's educational needs.

If an AT device is required by the student to ensure she receives a FAPE, the school must provide it at no cost to the student or her family. Further, parents cannot be required to use their insurance - public or private - to help offset the cost of the AT to the school.

- **Discuss the need for support for personnel**

The staff at your child's school may require special supports or training to assist them in meeting your child's unique and specific needs. For example, if the IEP Team determines your child requires an AT device, her teacher may need to be trained to use the device appropriately. Subject-content workshops (ex. on new reading instruction techniques) and training on the development of behavior intervention plans (BIPs) are other examples of personnel support that might need to be provided to school staff to ensure your child's IEP is correctly implemented. These personnel supports and/or teacher training should be written into your child's IEP.

- **Discuss how often your child's progress will be reported to you and how that progress will be measured**

The school must track and evaluate your child's progress towards reaching her IEP annual goals and report this information to you.

The IEP Team must identify how the school will collect information to assess your child's progress. Common ways to judge a child's progress on her IEP goals include using curriculum-based assessments (many are computer-based now), class tests, teacher observations, student grades, individualized data collection (ex. behavior charts etc.), state assessments or work samples.

Advocate for a broad, varied and rigorous data collection program to get the best information possible on your child's progress on her IEP goals.

You should receive these reports as often as parents of children without disabilities receive progress reports. Depending on your child's needs, receiving more reports may be appropriate.

Carefully monitor your child's progress on her IEP annual goals and benchmarks. A standard report card that reports letter grades in your child's different classroom subjects is not good enough - the reports must specifically reference your child's progress on her IEP goals so the IEP Team can make necessary adjustments in the IEP if it appears that she's not making adequate progress.

*(continued on page 28)*

## Health Services and Transportation as Related Services

School health services must be provided to your child if they are needed for her to benefit from special education. These services may be as simple as administering a prescription drug to your child or they may be as complicated as providing one-on-one nursing services to her for the entire school day. The health services must be able to be provided by a nurse or other qualified person.

Medical services that can only be provided by a physician do not have to be provided to your child except as needed as part of the evaluation and eligibility process. All health services agreed to by your child's IEP Team must be included in her IEP.

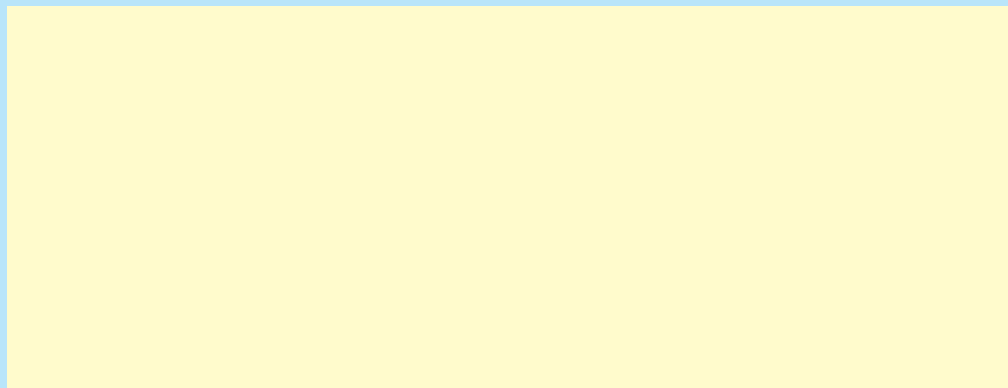
Transportation must be provided to your child if she needs it to benefit from the special education provided to her. Transportation services include:

- Travel to and from school and between schools (including travel to job sites for vocational training and job development opportunities included in your child's IEP)
- Travel in and around school buildings
- Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

If a school does not provide transportation to the general student population, the issue of transportation for students with disabilities must be decided on a case-by-case basis.

Neither the IDEA nor Section 504 impose a maximum travel time for students with disabilities, but your child's individual needs need to be considered.

It is illegal for school districts to schedule transportation for children with disabilities so that their school day is shorter than that of children without disabilities.





In order to be provided with FAPE, some children must receive special education services beyond Alabama's standard school day or school year.

- **Discuss involvement in statewide and local assessments**

If the IEP Team decides that your child needs accommodations to take statewide and local assessments, this information must be written into the IEP. This is very important, because even if your student receives accommodations in the classroom, if the IEP does not include them for state testing she will not get them.

- **Discuss your child's involvement in non-academic and extracurricular activities**

Your child may require supports in order for her to participate in non-academic and extra-curricular activities at her school - things like after-school clubs, field trips, marching band, and sports. The IEP Team must discuss any needed supports and note them in the IEP.

- **Determine your child's placement - where will your child receive her education services?**

The IDEA requires that your child attend school in her least restrictive environment (LRE). The LRE for your child is the school setting where she can successfully reach her IEP goals and, at the same time, be involved with students without disabilities to the maximum extent appropriate.

LRE decisions are as individualized as every other part of the IEP - your child's unique needs determine her classroom placement.

When deciding on your child's LRE, the IEP Team must first consider whether she can reach her IEP goals, with appropriate supplementary aids and services, in a regular classroom in the school she would attend if she did not have a disability (i.e. her home school). While the IDEA does not mandate regular class placement for every child with a disability, it presumes it will be the **first** placement option that the IEP Team considers. Placement decisions must be based on your child's needs, and not on factors such as type of disability, the availability of special education and related services, the availability of space, or administrative convenience.

If the IEP Team decides your child cannot reach her IEP goals in a regular classroom, then the Team can look at more restrictive placements, always considering how additional supports could be provided to support your child to ensure her success in the lesser restrictive placement before moving on to more restrictive settings. Examples of other placements are: resource rooms or special education classrooms, a special education classroom in a separate school, a special education classroom in a private school, or a residential facility.

Your child's IEP must include an explanation as to why the Team decided upon a particular LRE placement and why your child could not be educated in her home school in a regular classroom.

- **Discuss extended school year services**

In order to be provided with FAPE, some children must receive special education services beyond Alabama's standard school day or school year. These services are called extended school year (ESY) services.

The most common time that ESY services are provided is over your school's summer vacation but, depending on your child's needs, ESY services may be necessary over shorter breaks.

One factor that may be used to determine your child's eligibility for ESY services is a regression/recoupment (R/R) standard. Under this standard, the IEP Team considers whether your child will lose skills related to her IEP goals over a school break (regression). Then, the Team determines whether it will take an unreasonable amount of time after the break for her to get those skill levels back to where they were when the break began (the recoupment period). If the recoupment period would be unreasonably long, then your child is eligible for ESY services. However, any decision regarding your child's right to FAPE must be individualized according to her needs and circumstances. Thus, it may be inappropriate to use a single criterion like R/R to determine your child's eligibility for ESY. There may be other factors unique to your child that the Team should consider when determining her need for ESY services.

Often, school personnel will simply comment, without a meaningful review, that your child doesn't need ESY. This is inappropriate. The IEP Team should explore your child's need for ESY services early and regularly every school year and devise a plan for how it is going to determine her need for the services. If you believe your child may need ESY, keep notes on any regression or other problems you notice with your child as a result of weekend, holiday, or summer breaks and share this information with the Team. Discuss with the Team how it should review your child's eligibility for ESY given her unique learning needs.

ESY services must be provided at no cost to you. They must be as individualized to your child's needs as any other IEP service; schools may not unilaterally limit the type, amount, or duration of the services.

All the due process protections which apply to the regular school year program apply to the ESY program. For this reason, discussions about ESY services should occur early enough in the school year so that you have enough time to resolve disputes prior to the start of school breaks.

- **Sign the IEP**

When you sign the IEP, you are recording your attendance and participation in the IEP Team meeting. Sometimes, parents do not agree with the IEP and do not want to sign it for fear their signature will be interpreted as a stamp of approval. If you choose not to sign the IEP, the district may still note your participation at the meeting on the form. Some parents sign the form and make a notation next to their name or in an



Once a year, your child's school must provide you a copy of the procedural safeguards available to you as a parent of a child with a disability under the IDEA.



You have a right to one IEE at public expense each time your child's school conducts an evaluation with which you disagree.

attachment that explains their position regarding the IEP. Signing it and noting your concerns leaves a record of your active participation in the process.

### **Do all IEP team members always have to attend an IEP meeting? If my child's IEP needs to be revised during the school year, can it be changed without having a meeting?**

When the IDEA was rewritten in 2004, Congress sought to streamline the IEP meeting process by allowing Team members to be excused from meetings under certain circumstances and by allowing changes to be made to an IEP without the benefit of a meeting.

An IEP Team member is not required to attend an IEP Team meeting if you and the school agree in writing that her attendance isn't necessary because her area of the curriculum (or related services) isn't being changed or discussed in the meeting.

A Team member also may be excused from attending an IEP Team meeting even when the meeting involves a modification to that Team member's area of expertise. However, the Team member may be excused only with your written consent. Prior to obtaining your permission, the Team member must submit her written input regarding the development of the IEP to the IEP Team, including you. If you aren't satisfied with the provided information, you don't have to consent to the Team member's excusal.

Once you've had an annual IEP Team meeting for a school year, you and your child's school mutually may decide to make changes to your child's IEP without convening an IEP meeting. If changes are made to your child's IEP without a meeting of the Team, the school must obtain your written agreement to such changes and must ensure your child's IEP Team is informed of those changes. You must be provided with a revised copy of the IEP with the incorporated changes.

You should carefully consider any request to have Team members excused from meetings, or to have changes made to an IEP without a meeting. Will the IEP meeting accomplish what you want it to accomplish without the presence of all the Team members? Do you understand what changes are being proposed, or do you want to meet in person at an IEP meeting to discuss them? If you are uneasy about such requests, you can refuse to give your written consent.

### **May I audio or video tape my child's IEP meeting?**

The IDEA does not address the use of audio or video recordings at an IEP meeting and Alabama law leaves it up to an individual school district to decide whether IEP meetings may be recorded.

However, if a school has a policy that prohibits or limits the use of recording devices at IEP meetings, the policy must provide for exceptions if the recordings are necessary to ensure that a parent understands the IEP or the IEP process.

Any recording of an IEP meeting that is maintained by the district becomes part of the child's education record within the meaning of the Family Educational Rights and Privacy Act (FERPA) and would be subject to the confidentiality requirements of FERPA and the IDEA.

### How are draft IEPs used?

Parents and schools often find it helpful to share ideas and information, either verbally or in writing, before the IEP meeting takes place so that the actual meeting is more focused and productive.

Since writing a good IEP takes time, creativity and teamwork, these efforts at sharing and brainstorming can be tremendously useful. Some school districts use questionnaires, asking parents to note any particular concerns or suggestions they might have regarding services for the upcoming school year. These responses are then shared with the school members of the IEP Team so they can think about them before the meeting.

Sometimes, parents or school members of the IEP Team will draft a proposed IEP and use it at the meeting as a point for discussion. If a draft IEP is used, make sure you still discuss and understand every section. Parents should not feel pressured into accepting a draft as the final IEP. You should feel comfortable discussing and making changes to a draft at an IEP meeting.

### Who will receive a copy of my child's IEP?

The school must give you a copy of the IEP. Usually, you will get a copy at the end of the IEP meeting or by mail soon after. It's better to leave the meeting with a copy, even if it's in rough form. Many IEPs are filled out on a computer as the meeting occurs. It is very easy to have the school print a copy for you at the conclusion of the meeting. This will allow you to review the IEP right after the meeting when the discussions are fresh in your mind and to follow up with the school quickly if you have any concerns about its contents.

Keep the IEP handy and refer to it regularly to check on how the school is following it and how your child is progressing with her goals and benchmarks.

Since your child's IEP is part of her educational record, access to it at the school will be restricted. However, anyone at your child's school who will work or have contact with your child must understand the role she plays in helping your child reach her IEP goals and must have access to the IEP.

### How should I prepare for my child's IEP meeting?

Although you may feel that you have little to contribute in an IEP meeting, and may see yourself as an amateur and school personnel as professionals, you play a vital role in writing your child's IEP.

Below are some suggestions for how you can prepare for and participate in your child's IEP meeting.

### Before the IEP meeting

- Keep a file or notebook of all of your child's educational records. Things to include:



Before the IEP meeting keep a file or notebook of all of your child's educational records.



After the IEP meeting check to see that the IEP is filled in correctly and that it accurately represents what the IEP Team decided.

- IEPs, progress reports and report cards, grade transcripts, standardized test scores, disciplinary notices
  - Reports of evaluation results by the school and private evaluators
  - Meeting notices, rights forms or other official forms
  - Copies of letters or e-mails you write and receive about your child
  - Names, addresses, and phone numbers of persons you talk to about your child
  - Dates of visits and phone calls, and subjects discussed
- Visit your child's classroom.
  - Make a list of all the things you would like to see in your child's IEP. Include skills you would like to see your child learn or behaviors you would like to see improve.
  - Make a list of things you observe about your child at home: interests, responsibilities, self-care skills.
  - Ask your child how she feels about school, what she likes and dislikes.
  - Make a list of questions you want to ask about your child's IEP.
  - Get a copy of the IDEA's procedural rights notice and read through it. If there is something that you do not understand, ask the school to explain it to you at, or before, the IEP meeting.
  - Ask a relative or friend to go to the IEP meeting if it would make you feel more confident to have someone with you.
  - Review your child's current IEP to see how far she has come towards reaching her annual goals. Note both successes and failures so the team may be able to discover what is and is not working for your student.
  - Read the suggestions made by the people who tested or evaluated your child. If there is something that you do not understand, ask about it at the IEP meeting.
  - Learn about the roles of the IEP Team members and their relationship to your child. It is unlikely that all of your student's teachers will attend the meeting. This does not prevent them from providing input. Talk with them about their recommendations.

### During the IEP meeting

- Discuss your child's educational and life goals. Involve your child as appropriate to her age. At least by the time she's 16 years old, your child should attend her IEP meetings so she can participate in transition planning. Given your child's needs, it may be appropriate for her to start attending earlier.
- Have the school explain the results and recommendations from any tests or evaluations conducted on your child.
- Speak up! Don't be afraid to disagree or ask questions.

# Chapter 3

## Transition

Students with disabilities should graduate from high school with the skills they need to achieve their life dreams, whether those dreams involve further education or training, a job, living in the community, hanging around with friends, taking part in recreation activities or attending worship services - in other words, the very things that students without disabilities dream of doing.

Effective transition planning ensures that after graduation, no child or family ever has to ask the question: "What's next?"





*“Transition is about planning for life! It includes planning for academic and non-academic courses and learning experiences, employment and related training opportunities, choices about where to live in the community, and what to do for fun and socialization. One of the goals of transition is to help youth have an understanding of their disability and choices to determine their future. One of the ways transition does this is by connecting youth to teachers and other caring adults, support services, and experiences that build skills and help them reach their goals. Transition is based on family values, priorities, and culture, and is focused on an individual youth’s interests, preferences, and needs.”*

National Center on Secondary Education and Transition  
<http://www.ncset.org>

### What are transition services?

IDEA transition services are coordinated activities that focus on improving your child’s academic and functional skills so she will be able to achieve her post-school goals.

The post-school goals she might be preparing for include:

- further education
- employment (including supported employment)
- adult services
- independent living
- community participation

Transition services include:

- instruction
- related services
- community experiences
- the development of employment and other post-school adult living objectives
- the acquisition of daily living skills and the provision of functional vocational evaluations, if appropriate.

### When must my child’s IEP Team start doing transition planning?

At a minimum, transition services must be included in the first IEP that will be in effect when your child turns 16.

However, if your child’s IEP Team believes it’s appropriate, transition planning may start earlier than age 16.

Carefully consider whether you should start transition planning earlier than the age of 16. Do you think it’s realistic that your child is going to be able to receive all the transition services she’s going to need to reach her post-school goals if she starts getting these services only starting at age 16? If you are unsure, maximize the amount of time your child receives transition services by starting earlier.

### What does a “transition” IEP look like?

In addition to all the required IEP elements noted in Chapter 2, a transition IEP must include measurable post-school goals related to:

- education/training
- employment/career
- community/independent living (where needed by your child)

The IEP must also list the transition services your child needs to help her reach these goals.

### How do we start transition planning?

By talking with your child! Talk with her about her ideas for further education, employment, and where appropriate, her community living plans upon graduation. Consider questions like these:

- What does your child want to do after high school? Does she want to pursue further education or training or employment? If so, in what field? What skills will she need to be able to continue on with her education or to get a job?
- Where and how does your child want to live? Will she continue to live at home or in some other supported arrangement? Or, will she live independently? How will she arrange for housing? What does she need to know in order to live successfully in her chosen home?
- What kind of community or daily activities will she need or want to do - things like accessing health care, managing money, using transportation, doing recreation activities, being an effective self-advocate?

You need to know the answers to questions like these if you're going to identify your child's post-school goals and the transition services she needs to attain them.

Your child's IEP Team must consider what kind of age-appropriate transition assessments need to be done to collect further information to help you, your child, and the Team identify your child's post-school goals. Some of these assessments might address vocational needs and strengths, behavior issues, learning styles, assistive technology, and interest inventories.

### **We've identified my child's post-school goals; what's the next step?**

Each school year, your child's IEP Team must develop annual, measurable IEP goals that will move her towards her post-school goals. Each set of annual IEP goals builds on the ones that come before it in time, moving your child closer and closer to being ready for her life after school and the post-school goals she's set for herself.

### **We've identified the annual IEP goals my child will be working on in the coming school year; what's the next step?**

Once your child's annual IEP goals are identified, her IEP Team will consider the transition services she requires to achieve those goals. Any, or all, of the following transition services might be used:

- **Instruction**, including the course of study she will pursue and any remedial help or accommodations she needs.
- **Related services** your child needs to benefit from special education while in school. The IEP Team also should identify, as appropriate, linkages to adult agencies or providers before your child leaves the school system.
- **Community experiences** that are provided outside the school setting. Examples include community-based job exploration, job-site training, banking, shopping, transportation, counseling and recreation activities. Community-based job opportunities are especially effective in preparing youth for employment after graduation.



Start transition planning by talking with your child about her hopes and dreams!

### **Post High School Goals**

- What the student wants to do after high school in the following areas:
  - Education /Training
  - Employment
  - Community/ Independent Living

### **Annual Goals**

- What the student can reasonably be expected to accomplish in one school year that leads to the post-high school goals.



If your child has not attended IEP meetings before, this is the time for her to start attending them. If her transition plan is to address her dreams and be responsive to her needs, she must be a key player in the planning process.

- **Employment or other adult living activities** your child needs to achieve desired post-school outcomes. These could be experiences leading to a job or career or those that support activities done occasionally such as registering to vote, filing taxes, renting a home, accessing medical services, filing for insurance or accessing adult services such as Supplemental Security Income (SSI) or Medicaid waiver services.
- **If appropriate, acquisition of daily living skills.** Daily living skills are those activities that adults do every day (ex. preparing meals, budgeting, maintaining a home, paying bills, caring for clothes, grooming, etc.).
- **If appropriate, functional vocational evaluation.** This is an assessment process that provides information about career interests, aptitudes, and skills. Information may be gathered through situational assessments, observations, or formal measures.

This discussion and planning should result in an IEP that:

- is based on your child's strengths, needs, and interests
- will help your child achieve her desired post-school goals
- contains measurable annual IEP goals
- identifies who will provide, be responsible for, and pay for each transition service
- ensures that you and your child are aware of, and linked to, needed post-school services, programs and supports before your child exits school

### **What role does my child play in transition planning and at transition IEP meetings?**

If your child has not attended IEP meetings before, this is the time for her to start attending them. If her transition plan is to address her dreams and be responsive to her needs, she must be a key player in the planning process.

Whenever your child's post-school goals and transition plans are to be considered by her IEP Team, your child's school must invite her to attend the meeting.

If your child does not attend the IEP Team meeting, her school must take other steps to ensure that her preferences and interests are considered.

When your child reaches the age of 18, her IEP must include a statement that she has been informed of the special education rights that will transfer to her when she reaches the age of majority in Alabama - 19 years of age.

### **What role should I play in transition planning?**

As a parent, you should:

- encourage your child to be an active participant in transition planning. This is her life. She needs to be engaged in the process and may need support from you and other members of the IEP Team to participate effectively.

- make sure that transition planning starts early enough for adequate preparation. Remember that you can start earlier than age 16 if appropriate for your child.
- provide information to the IEP Team about your child's strengths, interests, and needs and the help your child may require in order to achieve her desired post-high school outcomes
- be actively engaged as a partner in all aspects of IEP planning, discussion and decision-making. Remember that teenagers can have a shortsighted view of the future. Your child may not be interested in attending college after high school, but this could change in the future. No matter which path she takes, help her create a path that leaves options open.

### How can school staff support transition planning?

School staff should:

- provide information on your child's strengths, past achievements and progress on her current IEP
- provide strategies for effectively teaching your child, including appropriate accommodations and/or modifications so she can successfully access the general curriculum.
- suggest courses of study and educational experiences that relate to her post-school goals
- identify needed related services
- provide recommendations regarding post-high school agencies, services and/or supports
- coordinate all the people, agencies, services or programs in the transition plan

### What other agencies may become involved in my child's IEP during transition planning?

When it's likely that an agency other than your child's school will provide or pay for transition services she receives during her high school years or for services she will receive after she graduates, your child's school should invite representatives from those agencies to your child's transition IEP meetings.

Outside agency representatives who could be invited to your child's transition IEP meetings include:

- vocational rehabilitation counselors, including ones from the Alabama Department of Rehabilitation Services
- admission or disability support staff from post-secondary or vocational schools
- Independent Living Center staff
- persons knowledgeable about financial benefits such as Social Security, Ticket-to-Work programs, or Medicaid
- personal care or health care providers, including mental health care providers
- Department of Human Resources social workers
- guidance counselors
- therapists



When your child reaches the age of 18, her IEP must include a statement that she has been informed of the special education rights that will transfer to her when she reaches the age of majority in Alabama - 19 years of age.



Because of issues related to the confidential nature of IEP meetings, you (or your child if he has reached the age of 19) must give prior written consent for the school to invite a representative from these agencies to an IEP meeting.

These agencies may:

- provide information about eligibility criteria for post-school adult services (ex., college support services and financial aid, vocational rehabilitation services, family services, Social Security work incentives)
- assist in the application process for post-school services
- provide transition services to your child prior to her exiting the school system

Because of issues related to the confidential nature of IEP meetings, you (or your child if she has reached the age of 19) must give prior written consent for the school to invite a representative from these agencies to an IEP meeting.

If your child's school is not inviting outside agency representatives to her IEP meetings, let the school know you'd like to have them invited. If these representatives are not coming to meetings after being invited, approach the agencies directly and advocate for their active participation.

**What if an outside agency agreed to provide or pay for transition services that are written in my child's IEP and it does not?**

If an identified agency fails to provide the transition services described in the IEP, your child's school must reconvene the IEP Team to identify other ways for those services to be provided.

**Does the school have to reevaluate my child when she graduates from high school?**

If your child graduates from high school with the Alabama High School Diploma or leaves high school because she has aged out, the school does not have to reevaluate her before terminating her eligibility for special education services.

When your child leaves school, the school must provide your child a summary of her academic and functional achievement. In Alabama, this is called a Summary of Progress (SOP). This summary must include recommendations on how to assist your child in meeting her post-school goals.

This summary is important. It's the last special education planning obligation done for your child before she leaves school. If written thoughtfully, the summary should position your child to smoothly access post-school services and move forward on her life goals.

As your child's graduation approaches, her IEP Team should discuss what needs to be included in her SOP. Ensure that the information provided in the summary will satisfy any requirements connected with your child's post-school goals. Depending on your child's needs, here's information you may want included in her summary:

- transcript information
- career and technical education achievement profiles
- information from your child, you and other agency personnel regarding your child's abilities, strengths, skills, needs and limitations

- school supports, accommodations, environmental modifications and compensatory strategies that have been provided to your child
- assistive technology devices and assistive services that have been helpful to your child
- challenges your child might encounter in post-secondary school, employment or independent living
- community agencies and adult service providers with whom your child may already be connected, including notes about the status of those connections, such as applications that have been completed, or where your child has already been accepted into a program
- adaptive behavior assessment results
- strength-based assessment results

### What diploma will my child receive when she graduates?

Upon completion of all graduation requirements, she will receive the Alabama High School Diploma.

Prior to 2013, Alabama students with disabilities could be awarded one of three exit documents upon graduation, depending on the course of study they pursued: the Alabama Regular High School Diploma, the Alabama Occupational Diploma (AOD), or the Certificate of Attendance.

In 2013, Alabama changed its diploma plan, doing away with the AOD and the Certificate. Now, only one exit document - the Alabama High School Diploma - will be awarded to all students who fulfill state and local graduation requirements.

### What are the state's graduation requirements?

Effective for 9th grade students in the 2013-14 school year, all students must earn the following 24 credits in order to graduate:

*Note: Individual boards of education may have their own requirements on top of the state minimum requirements described below.*



|                                                                                   |                                              |                                       |
|-----------------------------------------------------------------------------------|----------------------------------------------|---------------------------------------|
| <b>16 Credits</b><br>Four years each of English, Math, Science and Social Studies | <b>1 Credit</b><br>Physical Education        | <b>1/2 Credit</b><br>Health Education |
| <b>1 Credit</b><br>Career Preparedness                                            | <b>3 Credits</b><br>CTE/Foreign Language/Art | <b>2 1/2 Credits</b><br>Electives     |

- A student earns these 24 credits by taking courses in one (or more) of the following Pathways:
  - General Education Pathway
  - Essentials/Life Skills Pathways



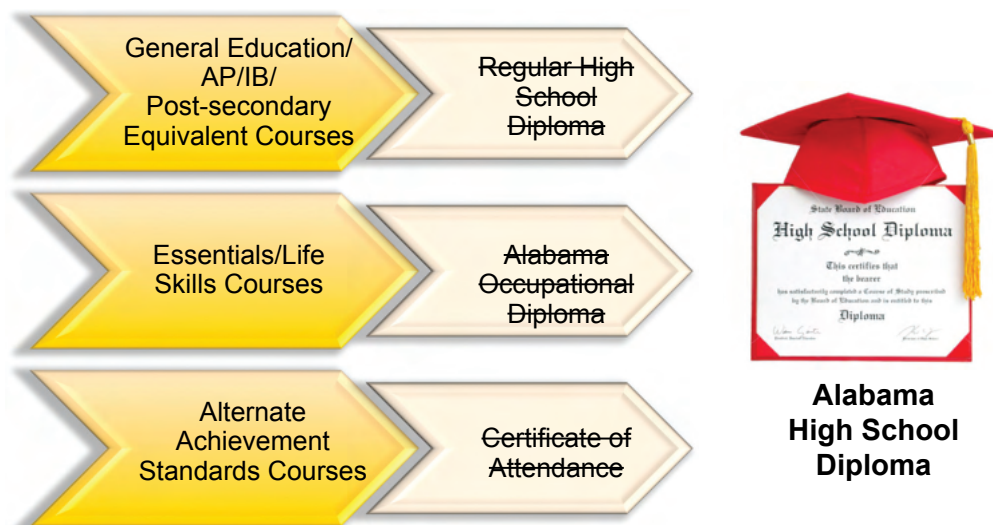
When your child leaves school, the school must provide your child a summary of her academic and functional achievement. In Alabama, this is called a Summary of Progress (SOP). This summary must include recommendations on how to assist your child in meeting her post-high school goals.

- Alternate Achievement Standards (AAS) Pathway - limited to students with significant cognitive disabilities who meet the criteria for the Alabama Alternate Assessment.

Each of these Pathways is made up of a set of courses and course substitutes identified by the ALSDE.

Until 2013, each of these course groupings led to the Regular High School Diploma, AOD, or Certificate, as described on page 39. Now, regardless of the courses taken, all students earn the Alabama High School Diploma.

### Multiple Pathways to the Same End



*Note: Students who were beyond their 9th grade year as of the 2013 diploma changes will be required to meet the graduation requirements for the diploma option they had been pursuing. However, upon graduation, they will be awarded the Alabama High School Diploma since the AOD and Certificate have been eliminated.*

### How should my child decide which Pathway and courses to pursue?

Your child should pursue the most rigorous courses possible, keeping her post-school goals in mind.

Here are some things to consider as you and your child decide between the General Education, Essentials/Life Skills, and the Alternate Achievement Standards (AAS) courses:

- Essentials/Life Skills courses (formerly AOD courses) would not be appropriate if your child wants to go to a four-year college; these classes are not accepted by such colleges.
- Essentials/Life Skills courses are not recognized by the National Collegiate Athletic Association (NCAA).

- Your child might be eligible to attend a community college with Essentials/Life Skills courses if she otherwise meets the community college's admission requirements. Check with the admissions office of the program you think she might attend.
- Students can take both General Education and Essentials/Life Skills courses.
- If your child takes four or more Essentials/Life Skills courses, she must complete the following work components in order to graduate:
  - Community-Based Work Instruction (including a minimum of 270 hours of documented, successful, independent, and paid employment)
  - Two Career and Technical Education Courses in a sequence
  - Workforce Essentials or Transition Services II
  - Cooperative Education/Work Based Experience or Life Skills Occupational Preparation
  - Cooperative Education Seminar
- AAS courses are limited to students with significant cognitive disabilities who are working toward the Alabama Extended Content Standards and who meet the criteria for the Alabama Alternate Assessment.



**If my child takes Essentials/Life Skills or AAS courses, will she be instructed in separate classes and not in regular education classes?**

Not necessarily. Essentials/Life Skills or AAS coursework may be taught in a regular education classroom or in a stand-alone course and classroom.

**Students with disabilities can stay in school until they are 21 or until they receive a regular high school diploma (in other words, the Alabama High School Diploma). Why would my child want to stay in school beyond her senior year?**

Some students with disabilities need extra time in school to be adequately prepared for adulthood. They may need further instruction in academics, daily living skills, or behavior management. They might need more opportunities for transition planning and training, particularly in the area of vocation and employment development. The extra years of schooling beyond the traditional senior year can be vital. Don't pass up those additional years without serious consideration. Talk to your child and her IEP Team about whether and how she would benefit from this extra time in school.

Often, many students don't like the idea of staying in school after age 18. After all, their peers and friends have graduated and are moving on to other educational opportunities or employment. They might resist because they think they have to go back to their high school and do more of the same coursework they've been doing for years.

Remember this: all IEP planning must be individualized to the needs of your student. The challenge for you and your child's IEP Team is to a) identify her



needs in relation to her post-school goals; b) devise an IEP that moves her forward to those goals; and c) provide her services in her “least restrictive environment.” For an 18-21 year old, that would likely include many more opportunities for learning to take place in the community.

**If my child is going to stay in school after her senior year, does that mean she can’t participate in graduation activities with her class?**

No. Your child **CAN** participate in graduation activities with her class even if she’s going to stay in school.

However, at the graduation ceremony she will not be given an Alabama High School Diploma. If she were to receive the Diploma, her right to continued school services would end. Instead, your child’s school will present her with a blank diploma or a locally developed certificate.

In an April 2014 memo, the ALSDE stated: “[a]warding the Alabama High School Diploma prematurely [denies] a student his or her right to receive services until age 21 and would be considered a denial of [a] Free Appropriate Public Education (FAPE).”

| <b>16 Credits</b><br><b>Four years each of</b><br><b>English, Math,</b><br><b>Science</b><br><b>and</b><br><b>Social Studies</b> | General Education<br>/AP/IB/<br>Post-secondary<br>Equivalent Courses                             | Essential<br>Life Skills<br>Courses                                                                                              | Alternate<br>Achievement<br>Standards Courses |
|----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
|                                                                                                                                  | English 9-12, or any AP/IB/post-secondary equivalent                                             | English Essentials 9-12                                                                                                          | AAS English 9-12                              |
|                                                                                                                                  | Algebra I, Geometry, and Algebra II with trig or Algebra II, or CTE/IB/post-secondary equivalent | Algebraic Essentials A&B and Geometry Essentials A&B                                                                             | AAS Math 9-12                                 |
|                                                                                                                                  | Biology and a physical science and 2 more science credits of the student’s choice                | Life Skills Science I-IV                                                                                                         | AAS Science 9-12                              |
|                                                                                                                                  | World History, U.S. History 1 and 2, Government/Econ                                             | World History for Living, U.S. History for Living 10 U.S. History for Living 11 Economics for Living/ U.S. Government for Living | AAS Socicial Studies 9-12                     |

# Chapter 4

## Behavior and Discipline

### Does the IDEA require my school to address my child's behavior needs?

Yes. The IDEA requires that a school address all the disability-related needs of a child who is eligible for special education services, whether those needs are academic, developmental or functional, if they impact her educational performance.

Those disability-related needs might include behavior issues.

The first place your child's school must address any of her behavior needs is in the evaluation and eligibility process.





*Serena has a medical diagnosis of Bipolar Disorder and Attention Deficit/Hyperactivity Disorder.*

*She's getting into trouble at school. She does not get along with her peers, is disrespectful to teachers, and cannot stay on task. She has had many discipline write-ups and suspensions, including a recent five-day suspension. However, she continues to make passing grades and to be promoted.*

*Special education assessments indicate she's performing well both cognitively (IQ) and academically (achievement). However, behavior assessments done on Serena (including one that*

*she completed herself) indicate clinically significant behaviors and that her behaviors are adversely affecting her social functioning in school.*

*The IEP Team could find Serena eligible based on these behavioral deficits since they are impacting her educational performance (defined under Alabama law as academic, social/emotional, and/or communication skills). This is true even though she's making passing grades. State and federal law require schools to provide FAPE to a child with a disability even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.*

As noted in Chapter 1, when your child's school evaluates her for eligibility for special education services, it must assess her in all areas related to a suspected disability, including, if appropriate, her social and emotional status. If your child's educational performance is impacted by behavior issues, she may be eligible for special education services on the basis of those behavior needs alone.



In writing your child's IEP, her IEP Team must include measurable annual goals that address any behavior needs identified during the evaluation process that are affecting her educational performance. In fact, the IDEA specifically states that if your child's behavior affects her learning or the learning of others, your child's IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Your child may require related services to help with her behavior needs. As noted in Chapter 2, related services are developmental, corrective, and other support services that your child needs so that she can benefit from the special education she's receiving. The related services that might help your child's behavior include things like:

- counseling services
- parent counseling and training
- psychological services
- school-based social work services

### What are Functional Behavioral Assessments (FBAs) and how are they used to help with behavior problems?

Your child's IEP Team conducts a functional behavioral assessment (FBA) to figure out why your child is having problem behaviors.

An FBA identifies any biological, emotional, social, or environmental factors that contribute or lead to the problem behaviors. An FBA is done to gather information to develop (or revise) a behavior improvement plan (BIP).

An FBA is important because it requires the IEP Team to move beyond the child's behavior to the underlying purpose(s) for her behavior - its function or what the child gets out of doing the problem behavior. Knowing the function of an inappropriate behavior helps the IEP Team develop a plan for teaching the child a new, replacement behavior. Two children may display the same behavior, but that behavior may serve different functions for each of them. The resulting BIP that's written for each child will have to account for the different functions that the behavior serves.

### How are FBAs done?

The IDEA does not specifically mandate a certain process to be used for conducting an FBA. However, clinical practice describes an FBA as requiring these basic components.

- **Define the problem. What is the problem behavior the IEP Team is trying to eliminate?**

When doing an FBA, the Team should be specific about identifying the problem behaviors. Rather than saying: "Tommy is stubborn" the Team could describe Tommy's behavior in this way: "Tommy lays on the floor and refuses to move when it's time to go to math class."

Behaviors are measurable actions and should be defined in terms of frequency, duration, and intensity - How often? How long? How much?

- **Collect data and information related to the problem behavior. What are the antecedents and consequences related to the behavior?**

The Team needs to identify the antecedents and consequences related to the behavior.

The behavior's antecedents are those things that occur before the behavior. For example, the Team should consider the following:

- When does the behavior happen? When does it not?
- Where does the behavior happen?
- Who is present and who is not when the behavior occurs?
- What is happening in the environment immediately before the behavior occurs?



*George is a 12 year old who becomes over-stimulated when others invade his personal space. He will hit peers and others who get too close to him which results in them moving away from him.*

*Martha is a 10 year old who loves to be the center of attention. When her teacher leaves her to work independently, she will hit anyone nearby which brings the teacher back to her side to reprimand her. She will stop hitting when the teacher is near her. As soon as the teacher leaves her, she starts hitting again.*

*For George, hitting gets people to move away from him. For Martha, hitting brings her the attention she's seeking. A well-conducted FBA will help identify the reasons why each child hits and then suggest responses targeted to each function.*



A BIP helps teachers and other school personnel deal with your child's inappropriate behaviors. It provides your child with the opportunity and motivation to learn and apply new, appropriate behaviors.

The FBA should identify the consequence of the behavior- those things that follow the behavior and influence it.

Consider the example of George and Martha (see page 45). The consequence of George's hitting is that peers move away from him and he gets the decrease in stimulation that he is seeking. On the other hand, the consequence of Martha's hitting is that she gets more attention from her teacher - even if it might be in the form of a reprimand from her.

To collect this information, the Team should use a variety of tools. The Team may interview you, your child, school staff or outside service providers (ex. mental health workers) who work with your child. The Team may arrange for observations of your child in a variety of environments and settings. It may ask you, relevant staff members or other persons who are familiar with your child to complete behavior rating scales for her. Depending on the age of your child, she might complete a self-report on a behavior rating scale.

Sometimes data need to be collected and observations conducted for the FBA by a behavior specialist - a person who has training and expertise in working with children who have behavior challenges. The school may have to contract with a behavior specialist when there is not one employed by the system.

- **Analyze the information and develop a hypothesis about the function of the problem behavior.**

Your child's IEP Team should analyze the information to determine what can be learned about the target behavior and the context in which it occurs. The Team should look for specific patterns associated with the target behavior. Your child's IEP Team should develop a hypothesis regarding the behavior. The hypothesis should look like this:

- *When this behavior occurs . . .* Describe context, antecedent, consequence.
- *The individual does . . .* Describe the behavior.
- *To get or avoid . . .* Describe the function.

Remember these terms:

- Antecedent - what happens before the behavior
- Target Behavior - the problem or inappropriate behavior
- Consequence - what happens after the behavior
- Function - what the child gets out of the inappropriate behavior

- **Develop, implement, and monitor the BIP**

A BIP helps teachers and other school personnel deal with your child's inappropriate behaviors. It provides your child with the opportunity and motivation to learn and apply new, appropriate behaviors.

During the implementation process of the BIP, it's common for school personnel (and parents) to become discouraged if the child's behaviors do not improve immediately. It's important for the Team to:

- Start simply - prioritize the behaviors that need to be worked on first.
- Don't expect too much too soon - in some cases, you're working to undo years of learned behavior.
- Be patient - the behavior may get worse before it gets better!
- Be consistent - all school staff should implement the plan consistently across different school environments. The Team should work with you to incorporate relevant parts of the BIP at home. It is important that the behavior modification is happening both at school and at home.
- Build on your child's strengths, not her deficits.
- Review and revise the plan as necessary.

The BIP should identify:

- The target behavior that has been identified to be reduced or eliminated
- The replacement behavior that will be taught your child in place of the target behavior
- When and how your child will be taught the replacement behavior, including practice of the replacement behavior
- A description of what will be done (consequence) when your child uses the replacement behavior
- The person(s) who will be responsible for the implementation of the BIP.

To be meaningful, your child's IEP Team should review the BIP at least annually. However, the Team should also review it when your child has reached her behavioral goals and new goals need to be developed or when the BIP is not working. The BIP must be reviewed by the IEP Team when certain disciplinary actions have been taken.

### **For how long can my child be suspended if she violates her school's code of conduct?**

If your child violates a provision of her school's code of conduct, school personnel may remove her from her current educational placement - sending her to an appropriate alternative educational setting, another setting, or suspending her for not more than 10 consecutive school days - to the extent such removals are applied to children without disabilities.

Let's refer to a removal that does not exceed 10 consecutive school days as a short term removal.

If your child misbehaves other times during the same school year, she may be subjected to additional short term removals.

If your child is subjected to a series of short term removals in a school year and those removals constitute a pattern of removals, then the IDEA says your child has been subjected to a disciplinary **change of placement**. See below for more information on what happens when there has been a change of placement.



### **The Use of Punishment as a Consequence CAUTION!**

- It's the least effective way to change a behavior.
- It does not teach appropriate behaviors.
- It can result in aggressive actions.
- It should only be considered as a last resort !



### **Can my child be suspended for more than 10 consecutive school days at a time?**

Yes. If your child violates a provision of her school's code of conduct, school personnel may remove her from her current educational placement - sending her to an appropriate alternative educational setting, another setting or suspending or expelling her - for more than 10 consecutive school days, to the extent such removals are applied to children without disabilities. Let's refer to a removal that is more than 10 consecutive school days as a long term removal. A long term removal is a disciplinary change of placement.

### **Does my child have a right to continued schooling when she's suspended?**

After your child has been removed from her current placement for 10 school days (cumulative or consecutive) in the same school year, the IDEA requires your school to continue to provide your child with educational services that enable her to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting her IEP goals.

Who determines the setting for such services depends on the nature of the disciplinary removal. This matter is discussed more fully below.

In addition to educating your child after 10 school days of removal, her school must also provide an FBA and BIP designed to address your child's behavior so it does not recur.

### **What is a disciplinary change of placement?**

A disciplinary change of placement occurs under two circumstances:

- Your child is removed from her current educational placement for more than 10 consecutive school days (a long term removal), or
- Your child is subjected to a series of short term removals that make a pattern of removals. A series of short term removals becomes a pattern when:
  - the series of removals total more than 10 school days in a school year and,
  - your child's behavior is substantially similar to her behavior in previous incidents that resulted in removal and,
  - factors such as the length of each removal, the total amount of time your child is removed, and the proximity of the removals to one another.

A school administrator and your child's special education teacher decide, on a case-by-case basis, whether your child's short term removals have created a pattern. The decision about whether a pattern has been created can be contested through due process and judicial proceedings.

### **Why is it important to know when a change of placement has occurred?**

A manifestation determination must be completed when a disciplinary change of placement has occurred.

In addition, on the date on which the school decides to make a disciplinary removal that constitutes a change of placement for your child, it must notify you of that decision, and provide you with a copy of the IDEA's procedural safeguards notice.

### What is a manifestation determination?

The manifestation determination (MD) dictates the disciplinary response your child's school can take to violations of the school code of conduct.

#### Learn how manifestation determinations work and be an active, informed participant in the process!

In a MD, you, school personnel, and relevant members of your child's IEP Team must meet within 10 school days of any decision to remove your child from her current educational placement when that removal creates a disciplinary change of placement.

You and the school identify the relevant members of your child's IEP Team who should make up the MD team.

MDs are done by reviewing all relevant information in your child's file, including the IEP, teacher observations and information provided by you.

In doing a MD, two questions have to be answered. If the answer to **either** of the questions is "yes" then the MD team must find that your child's misconduct was a manifestation of her disability.

- **Question One: Was your child's conduct the direct result of the school's failure to implement her IEP?**

Answer: If yes, then the MD team must find that her behavior is a manifestation of her disability.

- **Question Two: Was your child's conduct caused by or did it have a direct and substantial relationship to her disability?**

Answer: If yes, then the MD team must find that your child's conduct was a manifestation of her disability.

### What happens if the MD team determines that my child's misconduct was a manifestation of her disability?

If the MD team finds that your child's misconduct was a manifestation of her disability, her IEP Team must:

- Conduct an FBA if one has not been completed (note: as part of its obligation to provide FAPE, the Team should consider whether a previously completed FBA is adequate).
- Implement a BIP (or review and revise a previously completed one) to address the behavior.
- Return your child to the placement from which she was removed, unless you and the school agree to a change of placement as part of the modification of the BIP.

*Didi has been suspended four times so far this year:*

- Incident one - 3 day suspension
- Incident two- 2 day suspension
- Incident three - 1 day suspension
- Incident four- 4 day suspension

*She has been suspended for a total of 10 cumulative school days.*

*If Didi receives another disciplinary removal, she will be entitled to continued educational services because she will have gone over 10 days of removal.*

*If these short term removals and any subsequent short term removals are not a change of placement, then school personnel, in consultation with at least one of Didi's teachers, will determine the extent to which she needs services to enable her to participate in the general education curriculum and to progress toward meeting her IEP goals. They will also determine the setting in which Didi will receive such services.*

*If a change of placement is created, then a manifestation determination will have to be conducted.*



In addition, the school must immediately fix any deficiencies in how it implemented your child's IEP if the MD team determined that the school had failed to correctly implement it.

**What happens if the MD team determines that my child's misconduct was not a manifestation of her disability?**

If the MD team determines that your child's misconduct was not a manifestation of her disability, school personnel may discipline her just as they would a child without a disability for the same misconduct.

During the disciplinary action, your child must continue to receive educational services that enable her to participate in the general education curriculum and to progress toward meeting her IEP goals. Your child's IEP Team determines in what setting she will be placed.

The IEP Team must also provide your child with an FBA and BIP (or review/revise previously completed ones) designed to address the behavior so that it does not recur.

Your child's IEP Team determines the educational setting for her services when:

- there has been a change of placement because your child's removal is for more than 10 consecutive school days (a long term removal)
- there has been a change of placement because of a pattern of short term removals
- the misconduct involves weapons, drugs or serious bodily injury

**What are the special exceptions involving weapons, drugs and serious bodily injury?**

School personnel may remove your child to another setting for not more than 45 school days if, on school premises or at a function under the jurisdiction of the school, she

- carries or possesses a weapon to or at school
- knowingly possesses, uses, sells or solicits illegal drugs
- has inflicted serious bodily injury upon another person

School personnel have this authority whether or not the violations are found to be a manifestation of your child's disability.

Your child's IEP Team determines the appropriate educational setting for violations involving weapons, drugs and serious bodily injury. This setting must enable your child to participate in the general education curriculum and progress toward meeting her IEP goals.

Besides continuing to provide educational services in the event of misconduct involving weapons, drugs and serious bodily injury, the IEP Team must provide your child with an FBA or BIP (or review/revise previously completed ones) designed to address the behavior so that it does not recur.

**Federal law defines the following terms:**

A weapon is a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

An illegal drug is a controlled substance (as defined under the Controlled Substances Act (CSA)), but an illegal drug does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or used under any other authority under the CSA or any other provision of Federal Law.

Serious bodily injury is bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**Who determines the setting to which my child gets sent for short term removals that are not a disciplinary change in placement?**

School personnel, in consultation with at least one of your child's teachers, determine the setting in which your child will be placed.

This setting must enable your child to participate in the general education curriculum and to progress toward meeting her IEP goals. School personnel, in consultation with at least one of your child's teachers, determine the setting in which your child will be placed.

**My child is not yet eligible for special education. Is she entitled to protection under any of the IDEA's disciplinary provisions?**

Yes, under limited circumstances.

A child who is not eligible for special education and who has violated her school's code of conduct may assert the protections provided for in the IDEA if the school had knowledge that she was a child with a disability before the violation that led to the disciplinary action occurred.

A school is said to have knowledge that your child is a child with a disability if, before the violation occurred:

- you expressed concern in writing to school administrative personnel or to your child's teacher that the child is in need of special education and related services
- you requested an evaluation, verbally or in writing
- your child's teacher or other school personnel expressed specific concerns about a pattern of troubling behavior by your child to the school's special education director or other supervisory school personnel.

The school would not be said to have knowledge of your child's status as a child with a disability if:





A resolution meeting between the school and the parents must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the resolution meeting or they agree to use the mediation process

- you did not allow your child to be evaluated
- you refused special education services for your child
- she had been evaluated and determined not to be eligible for services

### **What happens if I disagree with any decision regarding my child's disciplinary removal or the MD decision?**

You have the right to appeal any such decision by requesting a due process hearing.

A due process hearing officer will hear and make a determination regarding such a disagreement. The hearing officer may return your child to the placement from which she was removed if she determines that the removal was improper, or that your child's behavior was a manifestation of her disability.

You also have the right to file a state administrative complaint alleging a denial of a free appropriate public education or to request voluntary mediation to address the matter.

### **What if school personnel disagree with any decision made by the MD team or the IEP Team regarding my child's disciplinary removal or the MD decision?**

The school has a right to appeal any removal, placement or MD decision by requesting a due process hearing if it believes that maintaining your child's current placement is substantially likely to result in injury to the child or others.

A due process hearing officer will hear and make a determination regarding any such disagreement. The hearing officer may order your child's placement to be changed to another appropriate setting for not more than 45 school days if she determines that maintaining your child's current placement is substantially likely to result in injury to the child or to others.

Further hearings can be filed by the school if it continues to believe that returning your child to her original placement is substantially likely to result in injury to the child or to others.

### **How quickly are disciplinary due process hearings heard and decided?**

Disciplinary due process hearings are handled on an expedited basis.

An expedited due process hearing must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make her decision within 10 school days after the hearing.

A resolution meeting between the school and the parents must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the resolution meeting or they agree to use the mediation process.

Unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the due process hearing may proceed.

Expedited due process decisions may be appealed in state or federal court.

**Where is my child going to be educated pending the disciplinary due process hearing decision?**

Your child must remain in any alternative setting in which she has been placed pending the decision of the hearing officer or until the expiration of the time period specified in the disciplinary action, whichever occurs first, unless you and the school agree otherwise.

**Can school officials report my child's misconduct to law enforcement and judicial authorities?**

Yes, if your child's misconduct constitutes a crime. The IDEA does not prohibit school personnel from reporting crimes committed by students with disabilities to law enforcement and judicial authorities.

If school personnel report a crime committed by your child, it must ensure that her special education and disciplinary records are sent for consideration by the appropriate authorities to whom the crime was reported. Such records may only be sent to the extent allowed under Family Educational Rights and Privacy Act.

**The IDEA states that "school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of [the IDEA's discipline protections and procedures], is appropriate for a child with a disability who violates a code of student conduct." When would this provision be used? What are unique circumstances?**

The provision allows school personnel to bypass disciplinary removals that are typically required by a school's code of conduct.

It allows school personnel the flexibility to make case-by-case disciplinary decisions by allowing them to consider a child's unique and individual circumstances when determining whether a change of placement is appropriate. This provision does not allow school personnel to ignore the other disciplinary protections provided to students that are described above. This provision must be used consistent with those requirements, including the requirement that children with disabilities cannot be disciplined more harshly than children without disabilities for the same misconduct.

Guidance provided by the U.S. Department of Education says that what constitutes unique circumstances is best determined at the local level by school personnel who know your child and all the facts and circumstances regarding her behavior. Factors such as your child's disciplinary history, ability to understand consequences, expressions of remorse, and the supports provided to her prior to the violation of the school code of conduct could all be unique circumstances considered by school personnel.

**Are there rules which protect children from the use of seclusion and restraint in school?**

Alabama adopted regulations on the use of seclusion and restraint in its public schools in December 2011. While the regulations apply to all students,



If school personnel report a crime committed by your child, it must ensure that her special education and disciplinary records are sent for consideration by the appropriate authorities to whom the crime was reported.



Seclusion is prohibited in Alabama schools.

such practices have historically been used disproportionately on children with disabilities.

As a parent of a child with a disability, you should become aware of the state's new rules, your own school district's policies and procedures, your and your child's rights under these rules, and advocacy steps you can take to work with your child's school to ensure her behavior needs are met and she is safe.

The U.S. Department of Education emphasized the following important points in its May 2012 Resource Document on seclusion and restraint:

- *Restraint and seclusion can have very serious consequences, including, most tragically, death.*
- *There is no evidence that using restraint or seclusion is effective in reducing the occurrence of problem behavior among children.*
- *Schools must make every effort to structure safe environments and provide a behavioral framework, such as the use of positive behavior interventions and supports that applies to all children, all staff, and all places in the school so that restraint and seclusion techniques are unnecessary.*

#### Is seclusion allowed in Alabama schools?

**Seclusion is prohibited in Alabama schools.** Your child may not be placed in a room or closed area that is locked and that she is physically prevented from leaving. Unlocked, accompanied segregation is allowed. That is, your child may be placed in an unlocked room with a teacher properly trained in de-escalation techniques or restraint.

Time-out is allowed. Time-out is a behavioral intervention where your child is temporarily removed from the learning activity. Time-out must be in an unlocked area that is properly lighted, ventilated, and heated or cooled. The space must be free of dangerous objects. An adult must be in reasonable physical proximity to your child and must have sight of her during the time-out. The time-out must be limited to a reasonable amount of time, but should not exceed 45 minutes.

In-school suspension, detention, or a student requested break in a different room or area are allowed.

#### Can a child be restrained in school?

Chemical restraints are medications used to control a student's movement or behavior.

**Chemical restraints are not allowed in Alabama schools.** Chemical restraints do not include medications prescribed by your child's doctor and used according to the prescription. Schools may not increase the dosage of your child's medication in order to control her behavior.

**Mechanical restraints are not allowed in Alabama schools.** Mechanical restraints are any device attached to your child or next to her that restrict her

movement. Adaptive or protective devices recommended by a clinician and when used as prescribed to promote normative body positioning, physical functioning or to prevent self-injurious behavior are not considered mechanical restraints. Seatbelts and other safety equipment used during the transportation of students are not considered mechanical restraints.

Physical restraint is any direct physical contact from an adult that prevents or significantly restricts your child's movement. **Physical restraints are not allowed in Alabama schools except in situations where your child is an immediate danger to herself or others and has not responded to de-escalation techniques.** In no case may a physical restraint be used that restricts the flow of air to your child's lungs. Physical restraint cannot be used as a form of punishment or discipline. Physical restraint must be stopped when your child is no longer a danger to herself or others or if she is in severe distress.

Physical restraint does not include providing limited physical contact to promote your child's safety or prevent self-injurious behavior; teach a skill; redirect attention; provide guidance to a location; provide comfort to your child; or as reasonably needed to prevent imminent destruction to school or another person's property.

#### What rights do I have in relation to the possible physical restraint of my child?

- You must be provided copies of your school's restraint policies via, at least, the school's code of conduct or student handbook.
- You have the right to request documentation that the teachers at your child's school are properly trained in restraint techniques, including prevention, de-escalation and positive behavioral intervention strategies.
- You must be notified in writing by the school within one school day if your child is restrained or secluded and receive a copy of the report used to document the incident.
- You must be invited to attend a debriefing session with relevant school staff if your child is restrained or secluded. The purpose of the debriefing session is to plan to prevent the reoccurrence of the use of restraint or seclusion. This meeting must occur no later than five school days of the incident unless you and the school agree otherwise.
- You must be notified immediately if your child is injured during a restraint or if your child is removed from school by law enforcement personnel or medical personnel.

#### How can I protect my child from the possible use of physical restraint?

- Ask your school for a copy of its restraint policies and its training documentation.
- Find out if and how your child's teachers are properly trained in restraint and, more importantly, in prevention, de-escalation and positive behavioral intervention strategies.
- Request an IEP meeting to proactively and vigorously plan how the school is going to address your child's behavior. If your child does not already have one in place, request that a behavior plan be developed. The use of restraint should not be included in your child's IEP or behavior plan. Restraint is NOT a planned intervention. Restraint is a response used in emergency situations when other planned interventions have failed. If you include restraint in your child's IEP, you are planning to fail.
- If your child is restrained, attend the debriefing session. Consider whether the school properly followed your child's IEP and/or behavior plan leading up to the restraint. Convene an IEP meeting to make necessary changes to your child's IEP.

## Chapter 5

# Conflict Resolution



An IEP should be developed through consensus - joint, informed decision-making between the IEP Team members. As a parent or guardian, you are considered an equal partner with the school staff in making these decisions. The other members of the IEP Team must consider the concerns and information that you share with them about your child.

Sometimes, consensus cannot be reached. You and the school district might disagree on a variety of issues: Should an evaluation be done and what tests should be used? What LRE placement should your child be in? What types of related services should your child receive and how often? Is your child making adequate progress towards her IEP goals?



### Where do I start if I have a problem?

In general, it's best to try to resolve problems first at the school level. Set up a meeting to talk about your concerns with the school personnel who can solve the problem: the teacher(s), the school principal, the special education coordinator, or the whole IEP Team. It can be helpful to go into this meeting with your concerns written down so you can ensure that all issues are addressed. Do your best to remain calm, even if the school personnel disagree with you. In most cases they want the same thing that you do, to find the best solution for your child.

If changes are made to your child's services as a result of your advocacy, it is important to make sure they are noted in writing in the IEP and get a copy of the amended IEP. If this informal problem-solving is not successful, there are other options you can pursue. Federal law lays out procedures that you have the right to use to resolve disputes. Which option you choose to use to resolve your dispute depends in large part on the urgency and severity of the problem, the relationships you've had with the school district in the past, and the outcome you're seeking.

### What is prior written notice?

Before your child's school takes certain actions regarding her special education services, it must provide you with "prior written notice." In Alabama, prior written notice is referred to a "Notice of Intent Regarding Special Education Services."

Your child's school must provide you with prior written notice in the following circumstances:

- Anytime your child's school proposes to initiate or change the identification, evaluation, educational placement, or provision of FAPE to your child
- Anytime your child's school refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to your child



Before your child's school takes certain actions regarding her special education services, it must provide you with "prior written notice."

Here are some examples of situations in which your child's IEP Team would be required to provide you with prior written notice:

- The IEP Team proposes to reduce the amount of time your child receives speech services from the school's speech language pathologist.
- The IEP Team proposes to change her placement from a regular classroom to a segregated classroom.
- The IEP Team refuses your request for an assistive technology evaluation for your child.
- The IEP Team refuses to assign a one-on-one aide to your child as you requested.

The notice must include:

- a description of the action proposed or refused by the school
- an explanation of why the school proposes or refuses to take the action
- a description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposal or refusal
- a description of any other factors which are relevant to the school's proposal or refusal
- a description of other options considered by the IEP Team and the reasons why those options were rejected
- resources for you to contact to help you understand your child's special education rights

This notice must be provided to you a reasonable time before the school takes the action it's contemplating.

Knowing the facts behind why the school is taking (or refusing to take) certain actions in regard to your child's special education programming will put you in a better position to resolve your dispute with your child's school. It may be that, after reflection, you are satisfied with the Team's decision. Or, you might want to pursue the issue with one of the many forms of dispute resolution available to you: mediation, due process and the state administrative complaint. A brief outline of these different options follows.

This outline is not intended to fully describe all the procedural requirements, responsibilities and timelines mandated by federal and state law for each of these dispute resolution mechanisms. You should obtain more information on each of these procedures before you decide to use any of them. Contact an attorney of your choosing, ADAP, or the ALSDE for more information.

### • Mediation

In mediation, a neutral, specially-trained person helps you and your child's school district come to a mutually agreeable solution to a problem involving the identification, evaluation, educational placement or provision of FAPE for your child. A mediator does not have the power to make a decision for either of the parties.

Mediation is always voluntary; you (or your child's school) cannot be forced to participate in mediation. Mediation can't be used to deny or delay your right to a due process hearing.

Any information gathered during the mediation process is confidential and can't be used in subsequent due process or court proceedings.

If you and the school are able to reach an agreement through mediation, that agreement must be put into a legally binding document. The agreement should be signed by you and appropriate school district personnel. Such agreements are enforceable in state or federal court.

If no agreement is reached, mediation is called off.

You can request mediation by contacting the ALSDE. All mediators are employees of the ALSDE and are assigned to cases on a rotating basis. The ALSDE pays for the cost of mediation.

### • Due Process Hearings

An impartial due process hearing is available when you or the school disagrees with the identification, evaluation, educational placement or provision of FAPE for your child. A hearing request must be made in writing to the ALSDE. The hearing request must include the following information:

- The name of the child
- The residence of the child and the school she is attending
- A description of the nature of the problem, including facts relating to the problem and a proposed resolution to the extent known and available to you at the time you request the hearing

A copy of the hearing request must also be sent to the other party.

Generally, you must file for a due process hearing within two years from the date you knew, or should have known, about the alleged violation of your child's rights. However, this timeline will not apply if you failed to request a hearing due to a misrepresentation by the school that it had resolved the problem that forms the basis of your complaint, or if the school withheld information from you that was required to be provided to you.

Once a request for a due process hearing is received, the school must convene a resolution meeting with you and relevant members of your child's IEP team (as determined by you and the school) to give the school an opportunity to resolve the complaint. One member of the resolution meeting





team must be someone who has decision-making authority on behalf of the school and who has specific knowledge of the facts identified in the hearing request. The school system may not bring an attorney to the resolution meeting unless you bring an attorney. If you are planning on bringing an attorney, you should notify the school system as it may decide to postpone the meeting until it has an attorney present as well.

If an agreement is reached through the resolution process, you and the school must execute a legally binding agreement that is signed by both parties. This agreement is enforceable in state or federal court. Either party may void the agreement within three business days of the agreement's execution.

You and the school may agree in writing to waive the meeting or you may both agree to participate in mediation in lieu of the resolution meeting.

If the complaint is not resolved through resolution or mediation within 30 days from the date you filed the due process complaint, the hearing may proceed.

At a due process hearing, you have the right to be accompanied and advised by counsel and/or individuals with special knowledge pertaining to children with disabilities.

At the hearing, you and the school will present your positions, call and cross-examine witnesses, and enter documents into evidence before a hearing officer who is assigned by the ALSDE.

Based on this evidence, the hearing officer will issue her decision.

A hearing officer's decision on whether your child received FAPE must be based on substantive grounds.

Where a procedural violation has been alleged, the hearing officer may find that your child did not receive FAPE only if the procedural violations interfered with your child's right to FAPE, significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE, or caused your child to be deprived of an educational benefit. However, none of the provisions noted above prevents a hearing officer from ordering a school to comply with the procedural safeguard requirements found in the IDEA.

A hearing officer's decision may be appealed in state or federal court. Notice of intent to file a civil action regarding the hearing officer's decision must be filed with all parties to the hearing within 30 calendar days upon receipt of the decision.

During the pendency of any due process or court hearing, your child must remain in her current educational placement, unless you and the school agree otherwise. Your child's current educational placement is the setting in which her IEP is currently being implemented. Your child's right to stay in her current educational placement attaches when a due process complaint

is filed. (See the Appendix for a copy of the ALSDE's due process hearing request form.)

- **State Administrative Complaint**

A State administrative complaint is also called a "60 day complaint." If you feel that your school has violated your child's rights under the IDEA, you may request an investigation by the ALSDE through the state's administrative complaint process.

State administrative complaints can address any matter related to the identification, evaluation, placement or provision of FAPE for your child. State complaints may only be filed for violations that allegedly occurred less than one year before the date of the complaint. Your complaint letter must include the following:

- the relevant facts related to how you believe your child's school has violated the law
- the name and residence of your child and the school your child is attending
- a proposed solution to the problem (to the extent you can identify a resolution at the time you are filing the complaint)
- your signature and contact information

When you mail a copy of the complaint letter to the ALSDE, you must also forward a copy to your child's school.

If possible, send the letters as registered mail, so there is a record of when it was received.

In response to your complaint letter, the ALSDE will offer the school the chance to submit a written resolution statement or a statement of position that addresses your complaint.

You will be given a chance to submit additional information about the allegations you have made.

Federal law requires that you and the school be provided the opportunity to engage in mediation to try to resolve the concerns raised in your complaint. As noted above, mediation is always voluntary. You may decline to go to mediation with the school, leaving the complaint in the hands of the ALSDE to resolve through its investigation.

The ALSDE will review all relevant information related to each claim in the complaint and make an independent decision as to whether the school violated your child's rights. The ALSDE may conduct an on-site investigation in your district.

After the investigation is complete, the ALSDE will send you a written decision detailing its findings and conclusions. If the ALSDE finds that the school violated your child's rights, its decision must outline appropriate corrective action (such as compensatory services or monetary reimbursement).





The ALSDE must also ensure the appropriate future provision of services for all children with disabilities.

Barring any exceptional circumstances, the entire complaint process must be completed within 60 days from the receipt of the original complaint.

State administrative complaints may be filed by an organization or an individual.

If any issues in a state administrative complaint are already the subject of a due process hearing, the ALSDE will set those parts of the complaint aside until the conclusion of the hearing. However, any issue in the complaint that is not a part of a due process action must be resolved through the complaint process. If an issue raised in your complaint was previously decided in a due process hearing involving the same parties, that decision is binding on that issue.

(See the Appendix for a copy of the ALSDE's State Administrative complaint form.)

# Chapter 6

## Section 504



<sup>1</sup>Title II of the Americans with Disabilities Act extends this prohibition against discrimination to state or local government services, programs, or activities regardless of whether they receive any federal funding, including public schools. The regulations for Section 504 and Title II are virtually identical. Both laws may be used to challenge discriminatory practices in schools.

Like the IDEA, Section 504 of the Rehabilitation Act of 1973 (Section 504) provides protection and services to school children with disabilities.<sup>1</sup>

Section 504 is a civil rights statute. It prohibits discrimination on the basis of disability in any program or activity that receives federal financial assistance - including schools. Section 504 ensures that people with disabilities have equal access to participate in services and activities as persons without disabilities.<sup>1</sup>



Section 504's eligibility requirements are different from those of the IDEA.

As explained in Chapter 1, the IDEA only applies to your child if she has one of the specific physical, mental, emotional, or sensory impairments listed as the 13 recognized disability categories under the IDEA and if she has been found to need special education and related services.

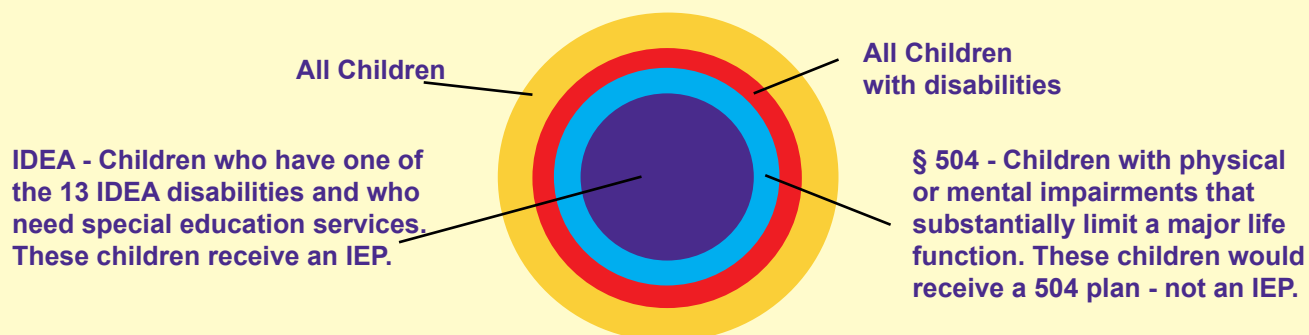
If your child has been found ineligible for services under the IDEA, always ask the evaluation team to consider whether she may be eligible for services under Section 504 and/or to refer her to your school's Problem Solving Team. School staff should automatically consider these options, but often do not.

Similarly, just because your child has never been evaluated for IDEA-services, doesn't mean she shouldn't be considered for Section 504 services and protections. Schools have Child Find obligations under Section 504 just like they do under the IDEA. Do not accept a blanket statement from your child's school that she wouldn't qualify for Section 504's protections and services.

### What does Section 504 provide to my child?

Section 504 requires schools to provide a free appropriate public education (FAPE) to eligible students. An appropriate education is regular or special education and related aids and services that are designed to meet the individual needs of your child as adequately as the needs of children without disabilities are met.

### Eligibility for Section 504 and the IDEA



An appropriate education is also one that follows Section 504's requirements regarding evaluation, placement and procedural protections.

Finally, Section 504 requires that eligible students be provided equal access to non-academic and extra-curricular activities like counseling, competitive or recreational athletics, transportation, health services, special interest groups or clubs, and student employment.

### **What students are covered by Section 504?**

To be eligible under Section 504, a student must:

- have a physical or mental impairment (permanent or temporary) that substantially limits one or more major life activities;
- have a record of such an impairment; or
- be regarded as having such an impairment.

Section 504 regulations do not provide an exhaustive list of specific diseases or conditions that constitute physical or mental impairments.

They do, however, provide this description: a physical or mental impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or any mental or psychological disorder, such as an intellectual disability [formerly mental retardation], organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Section 504 regulations define major life activities as such things as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. The operation of a major bodily function, including those of the immune, digestive, genitourinary, neurological, brain, respiratory, and circulatory systems, among others, are also considered major life activities. Section 504's list of examples of major life activities and major bodily functions are not exhaustive - an activity or function not specifically listed could still, nonetheless, be a major life activity.

Only one major life activity needs to be affected by your child's disability to be considered an impairment; it need not affect more than one life activity.

Disabilities or conditions that are episodic in nature - that is, they only occur on occasion rather than being constant - qualify as impairments if they would limit a major life activity when active. Epilepsy or asthma could be considered episodic. Cancer that is in remission could also be considered episodic.

The decision about whether a major life activity is substantially limited is made on a case-by-case basis by a Section 504 team.





### What does an appropriate evaluation look like under Section 504?

There is no formal definition or test to determine if a major life activity is “substantially limited.” Compared to the IDEA, Section 504 provides less direction to schools about the required evaluation process, who must be involved in the process, consent procedures, evaluation documentation, and timelines.

Ask your school for a copy of its Section 504 evaluation, reevaluation, placement and due process procedures!

If your child already has been properly evaluated for eligibility under the IDEA, that evaluation process meets the evaluation requirements under Section 504 and no further evaluation to determine eligibility under Section 504 should be necessary. If your school chooses to adopt a separate process, that process must follow the requirements for evaluating the needs of students under Section 504.

Like the IDEA, Section 504 evaluations must be validated for the specific purpose for which they are being used and administered by trained personnel in conformance with the instructions provided by their producer. The evaluations must be tailored to assess specific areas of educational need. Finally, they must be given so that the test results accurately reflect your child's aptitude or achievement levels or whatever other factor the test purports to measure.

The group making Section 504 eligibility and service plan decisions must draw upon information from a variety of sources. Depending on your child, that information could include aptitude and achievement tests, teacher recommendations, health conditions, social or cultural background information, and adaptive behavior - whatever factors might impede her equal access to the school's programming. The group must establish procedures to ensure that this information is documented and carefully considered. The group must be composed of persons knowledgeable about your child, the meaning of evaluation data, and placement options.

Note that there is no specific federal requirement that parents be included as part of the group making Section 504 eligibility and service decisions. However, as a practical matter, most school districts have policies in place that require parents to be part of that group. When it comes to Section 504, it pays to check your district's written policies.

Many parents think that having a physician's diagnosis of a disability (for example, asthma or ADHD) means that their child is automatically eligible for services under Section 504. A physician's diagnosis is just one piece of information that Section 504 eligibility teams must consider in determining eligibility. The Team must determine whether there is an impairment (the physician's diagnosis will help inform this determination) and then the Team must decide whether that impairment substantially limits a major life function.

### What procedural safeguards must be provided under Section 504?

Every school district must establish a system of procedural safeguards under Section 504 that provides for:

- parental consent to be provided before any evaluation can take place
- notice to you explaining any evaluation and placement decision affecting your child and of your rights under Section 504
- an opportunity for you to examine relevant educational records for your child
- an impartial hearing process that includes the opportunity for you to participate and be represented by counsel and that allows decisions made by your school regarding Section 504 eligibility, services or placement to be reviewed.



### What are mitigating measures and how are they considered by the Section 504 team in determining eligibility?

Mitigating measures are devices, medications, or practices that your child uses to correct for, or reduce, the effects of her mental or physical impairment.

Here's a list of some kinds of mitigating measures: medication; medical supplies, equipment or appliances; low-vision devices (but not ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

When deciding whether your child is eligible under Section 504, the evaluation team may not consider the impact of such mitigating measures. Rather, it must consider the impact of your child's physical or mental impairment(s) on her major life activities without the helpful effects of such mitigating measures.

Additionally, the focus should be on how the major life activity is limited, not what your child can do (or has done) in spite of the impairment.

### Is there a least restrictive environment (LRE) mandate to Section 504 services like there is in the IDEA?

Yes. Section 504 requires a school to serve an eligible student in the regular educational environment unless it's demonstrated that the student's education, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

Similarly, when considering non-academic and extracurricular services and activities, the school must ensure that an eligible student participates with persons without disabilities to the maximum extent appropriate, providing needed aids and services.

**What do I do when my school does not follow proper evaluation or placement procedures under Section 504 or it does not follow my child's 504 plan? What if I am not satisfied with an evaluation, placement or service decision made by the 504 team?**

You may want to consider filing a complaint with Office for Civil Rights (OCR) for matters involving procedural issues (ex., untimely delays in evaluation) or where your child's Section 504 plan is not being followed (ex., classroom accommodations are not being provided), or where your child is being treated differently because she has a disability (ex., the bus that transports children with disabilities arrives at school late and picks up children early, thereby providing a shortened school day).

For substantive matters regarding issues like your child's eligibility or the sufficiency of Section 504 plan, you might want to consider requesting an impartial hearing from your school. Every school district must make an impartial hearing available to parents to resolve disputes related to Section 504.

Guidance provided by OCR states that, except in extraordinary circumstances, it will not review the result of individual placement or other educational decisions so long as your school district complies with the procedural requirements of Section 504. Thus, OCR generally will not evaluate the content of your child's educational plan.

OCR does not engage in formal mediation, but may offer to facilitate mediation to resolve a complaint filed under Section 504. If both parties are willing to mediate, OCR will work with them to help reach a resolution by providing each side with an understanding of pertinent legal standards and possible remedies.



If you would like more information on the OCR complaint process, visit OCR's web site at:

<http://www.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>

Or, contact OCR at:

Office for Civil Rights, Atlanta Office  
U.S. Department of Education  
61 Forsyth Street, S.W., Suite 19T10  
Atlanta, GA 30303-8927  
Telephone: (404) 974-9406  
Fax number: (404) 974-9471  
Email: [OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov)

The agency provides a comprehensive Case Resolution and Investigation Manual that outlines the OCR complaint process. On-line complaints may be filed on the agency's web site.

## Chapter 7

# Early Intervention Services for Infants and Toddlers

As noted earlier, eligible children with disabilities from birth through age 2 are provided services by Alabama's Early Intervention (EI) System, part of the state's Department of Rehabilitation Services.

Services for children in this age range are often referred to as Part C services because of the section of the IDEA which requires such services.

Local public school systems are responsible for providing special education to eligible children from ages 3 to 21. Services for children in this age range are referred to as Part B services.





In addition to ensuring that your child's needs are met while she's being served by EI, one of the most important things EI system staff will do for you and your child is ensure a seamless transition from Part C services to Part B services when she reaches the age of three.

The Alabama Early Intervention System and the Alabama State Department of Education (ALSDE) have collaborated on a comprehensive handbook that describes services for children with disabilities, ages birth through five. This book is referred to as the "Red Book." You can request a copy from your local school system or EI agency, the Department of Rehabilitation Services (EI Division), or the ALSDE. See the Resource List for state contact information on page 104.

### What are the goals of EI services?

EI services are designed to achieve four goals for your child:

- To enhance her development and minimize her potential for developmental delay,
- To reduce her need for special education and related services once she reaches school age,
- To maximize the likelihood that she will lead a full and productive life included in her community, and
- To enhance your family's ability to meet her needs.

### Who is eligible for EI services?

Infants and toddlers from birth through age 2 are eligible to receive EI services if they are delayed by 25% or more as measured by appropriate diagnostic instruments and procedures in their cognitive, physical, communicative, social, emotional or adaptive development, or if they have a diagnosis of a physical and/or medical condition that will likely result in developmental delay.

- **physical development** (including vision and hearing) - how your child grasps, moves, sits, crawls, walks, sees, and hears
- **cognitive development** - how your child thinks and solves problems
- **communication** - how your child communicates with gestures, sounds, and words and understands spoken word
- **social or emotional development** - how your child acts with other children and adults
- **adaptive development** - how your child assists in personal skill areas like eating, dressing, bathing, and brushing teeth

### What Types of EI Services are available?

Depending on the need of your child and family, EI services may include:

- Assistive technology
- Audiology
- Family training, counseling and home visits
- Health services
- Medical services (only for diagnostic and evaluation purposes)

- Nursing services
- Nutrition services
- Occupational therapy
- Physical therapy
- Psychological services
- Service coordination
- Social work services
- Specialized instruction
- Speech-language pathology
- Transportation and related costs
- Vision services



### If I think my child may need EI services, where do I go for help?

Contact the EI System's Child Find Office at 1-800-543-3098.

An intake representative will ask you some basic biographical and contact information which will be passed on to the EI coordinating agency in your community.

A representative from that agency will contact you to set up a time when your child can be evaluated to see if she's eligible for EI services. This referral must be acted upon within 10 working days. You must give your consent before your child is evaluated. The agency is required to provide you with an initial notice of your rights under Part C.

Early Intervention services are:

- **Family-centered** - EI supports and services are for your family, not just your child.
- **Individualized** - EI supports and services are based on your family's and child's unique needs and resources.
- **Coordinated** - EI services are developed across agencies and among professionals within and across agencies.
- **Community-based** - EI services are provided in natural environments including home and community settings.

### What happens during an EI evaluation?

The IDEA requires that your child receive a comprehensive multidisciplinary evaluation to find out the nature of her strengths, delays or difficulties, and to determine whether she's eligible for EI services.

During an evaluation, your child will be evaluated by at least two qualified EI service system personnel. As part of the evaluation process, these evaluators will observe your child, ask your child to do certain tasks or things, and talk to you and her. The evaluators may want to review other information like your child's medical history and may seek input from others, including her pediatrician or other care giving or service providers.

EI evaluations are provided free of charge.

Following your child's evaluation, you and a team of professionals will meet and review all of the data, results, and reports. The participating agency is required to provide you, at no cost, a copy of all paperwork and evaluations. The people on the team will talk with you about whether your child meets the EI eligibility criteria. If so, your child will be found eligible for services.

Your child should be referred to the proper agency no later than seven days after being found eligible. If the lead agency determines that your child does not have a disability, it must provide you with written notice and information about your right to dispute the determination.

"Remember, [the EI] planning process is for you and your child. You are the one who should make the decisions about what is best for your child and family based on the information you have been given during the evaluation and assessment process. Don't hesitate to express your concerns or doubts about what is happening during the planning process."

*An Eligible Family's Guide to Alabama's Early Intervention System, <http://www.rehab.state.al.us>*

### **My child has been found eligible for services. What happens next?**

Once your child is found eligible to receive EI services, your child and family will have an assessment conducted to determine your child's unique needs, your family's resources, priorities and concerns related to your child's development, and the nature and extent of early intervention support and services needed. Such assessments will be conducted throughout the time your child is served by the EI system.

With the evaluation and assessment information, you will meet with EI providers to develop a written plan for providing EI services to your child and, as necessary, to your family. This plan is called the ISP.

The IDEA allows for EI services to begin prior to a complete evaluation if your child has an obvious service need.

From the time you request an evaluation, the agency has 45 days to complete the screening, evaluation, assessment, and, if needed, the IFSP.

An IFSP review must be conducted every six months, but can be conducted more often if conditions warrant, or if you request such a review. A meeting must be held annually to evaluate the IFSP, your child's progress, and revise its provisions as necessary.

### **Who can attend the IFSP meeting?**

- You, the child's parents!
- Other family members, friends, service providers or advocates, as you request
- Your child's EI service coordinator
- Evaluation or assessment personnel



- As appropriate, persons who will be providing services to your child and family

### What is an Individualized Family Service Plan?

An IFSP must include:

- The name of your child's EI service coordinator. This person is responsible for implementation of the IFSP and for coordinating with other agencies and persons. The EI service coordinator assigned to your family at the time of initial referral may continue to serve as your child's EI service coordinator, or a new service coordinator may be appointed at the IFSP meeting.
- A statement, based on evaluation and assessment information, of your child's developmental status in each of the five specified developmental areas: your child's physical development (including vision and hearing), cognitive development, communication skills and needs, social or emotional development, and adaptive development.
- A statement, if your family consents to its inclusion, of your family's resources, priorities and concerns related to enhancing the development of your child.
- A statement of the major outcomes expected to be achieved for your child and family, with the criteria, procedures and timelines to be used in measuring progress.
- A statement of the specific EI services that are going to be provided in order to achieve the identified outcomes. This statement must answer the following questions:
  - Who will provide the services?
  - How will the services be provided?
  - Will they be provided individually or in a group? How long will each session last?
  - How will the services be funded?
  - Where will the services be provided? To the maximum extent appropriate to the needs of your child, EI services must be provided in natural environments - home, childcare centers, or other community settings in which children without disabilities participate. If the identified services are not going to be provided in a natural environment, the IFSP must include a statement explaining why.
- To the extent appropriate, the IFSP must include a statement of medical and other services that your child needs but are not required under Part C. Including these other services allows the IFSP Team to have a comprehensive picture of your child's total  
(continued on page 75)



## Transition from Part C to Part B Services

At the age of three, children are no longer eligible for services funded or coordinated by the EI/Part C system. Instead, eligible children with disabilities are provided services by their public school system.

One of the most important responsibilities of the EI system is to help ensure your child's smooth transition between these two service systems. The IDEA's transition requirements seek to ensure that evaluations and planning are completed in a timely way so that when your child turns three years old, an IEP has been written for her (if she's eligible for Part B services) and it's ready to be implemented.

From the moment your child starts receiving EI services, you and your child's service coordinator should start thinking ahead to what's going to happen when she turns three. What will her needs be? What service delivery options are available in your community? Which of those options are right for your child and family? Do you understand the rights that your child has under Part B?

By the time your child reaches the age of 30 months (2 ½ years), a written EI transition plan must be included in her IFSP. Your child's EI service coordinator must include you in creating this plan, inviting other EI team members to participate as desired.

At a minimum, the EI transition plan that is in place by the time your child reaches the age of 30 months old must include information about:

- Potential preschool and community placements and services,
- Training about transition and how it will affect your child and family including the differences between Part C and Part B services, and
- With your permission, plans for how information regarding your child and her EI history and needs will be shared with your school system as part of a referral and an invitation to your school system's EI transition representative to participate in a Transition Meeting.



By the age of 33 months, a Transition Meeting must be held with an EI transition representative employed by your local school system. You must be informed of all preschool programs at least 90 days prior to your child's third birthday. The purpose of the Transition Meeting is to continue to fine-tune your child's transition planning and to identify next steps in the planning process, including formal referral to the Part B services, eligibility matters, and the IEP process.

Your child's eligibility for Part B services is determined by your school system according to the time lines and eligibility criteria noted under Part B (see Chapter 2). However, an eligible child must have an IEP in place and ready to be implemented by the time she turns 3 years old.

If you request it, your child's school must invite a representative from your EI service system to attend your child's initial IEP meeting to assist in the smooth transition of services.

It is important for the IFSP to be clear about what services are to be provided and by whom, the actions to be taken by the EI service coordinator, and the role you as parents play in the IFSP.

service needs. Your child's EI service coordinator should help you secure these services, whether through public or private means.

- The projected starting dates for services and their anticipated duration.
- The steps to be taken to transition your child to Part B services (ex., preschool services or other services that are considered appropriate for your child) when she reaches the age of three. You must be included in the development of this transition plan.

The transition plan must be included in your child's IFSP by the time she turns 30 months old. These transition steps include discussing and educating you about future placement and service options. These steps must also include preparing your child for the upcoming transition so she's ready for it. In preparation for transition, the IFSP must include a plan for transmitting information about your child to your local school system. You must provide consent for this information to be transmitted to your local school.

### **Do I have to give my consent for my child to be evaluated and provided EI services?**

You must give your written consent before your child's initial evaluation and assessment and before EI services begin for your child.

You may withdraw your consent for services at any time. You determine whether you, your child or other family members will accept any planned EI service.

### **May I review my child's EI records?**

You have the right to inspect your child's EI records promptly, but in no case more than 45 days after you ask to do so.

### **What if I disagree with a proposed change to my child's EI services?**

The EI system must provide you with written notice before it makes any changes to your child's services.

### **What steps can I take if I feel my rights or my child's rights have been violated?**

The EI system provides three ways for you to resolve any matter related to your child's eligibility under the EI system or her services. You may:

- **Request Mediation** - a voluntary process where an impartial, qualified mediator assigned by the Commissioner of Rehabilitation Services helps you and the EI service provider or system reach a mutually agreeable resolution. The mediator will provide a written report to the parties with a copy to the Commissioner. The report will become a part of your child's record.





- **Request an impartial due process hearing** - a hearing officer assigned by the Commissioner of Rehabilitation Services will hear evidence and make a determination regarding the dispute. A hearing must be completed in 45 calendar days after requested, unless there is an extension. The Hearing Officer's decision is final, unless appealed. Within 30 days from the receipt of the Hearing Officer's decision, the EI service provider must provide the EI system with written notice of its intended response to the actions ordered by the Hearing Officer. The EI system will review the written notice of intent and will verify all proper actions have been completed. During the hearing, your child must continue to receive the EI services currently being provided to her unless you and the provider agree otherwise. If the issue involves an application for initial services, your child, with your consent, must receive those services not in dispute.
- **Ask for an impartial resolution of complaints** - made by providing the Commissioner of Rehabilitation Services with facts and information related to the alleged violation of federal and or state law, including efforts made to resolve the issue to date. A state level EI staff person will investigate the complaint, according to state procedures. The process must be completed within 60 days unless an extension is granted.



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## MY EDUCATION DIRECTORY

My Child's Name: \_\_\_\_\_

School: \_\_\_\_\_

### Important Contacts at School

| Position                | Name | Phone | E-Mail |
|-------------------------|------|-------|--------|
| School Superintendent   |      |       |        |
| Special Ed. Coordinator |      |       |        |
| Principal               |      |       |        |
| Special Educator        |      |       |        |
| General Educator        |      |       |        |
| Speech Therapist        |      |       |        |
| Physical Therapist      |      |       |        |
| Occupational Therapist  |      |       |        |
| School Psychometrist    |      |       |        |
| Counselor               |      |       |        |
| Paraprofessional        |      |       |        |

|                           |  |  |
|---------------------------|--|--|
| My Child's Bus Driver is: |  |  |
| Bus Garage Phone number:  |  |  |
| Special Transportation:   |  |  |

### Other Important Numbers

| Position | Name | Phone | E-Mail |
|----------|------|-------|--------|
|          |      |       |        |
|          |      |       |        |

**290-8-9-.03 Disability Definitions, Criteria, and Minimum Required Evaluative Components.**

Each public agency must develop and implement procedures to identify and evaluate children suspected of having a disability that adversely affects their educational performance and who, as a result, may need special education (specially designed instruction) and related services. The evaluations listed in this rule are the required minimum evaluations to be administered prior to determining initial eligibility for special education services. Professional judgment should be used to determine if the results of any of the required evaluations are reliable sources of information or if other assessment data may prove to be more accurate indicators of the child's level of functioning. The IEP Team may determine, on a case-by-case basis, that other evaluations are needed. Vision and hearing screenings (traditional or functional, as appropriate) must be the first evaluations conducted for all children suspected of having a disability, unless otherwise indicated.

**(1) Autism.**

- (a) Definition. Autism means a developmental disability that significantly affects verbal and nonverbal communication and social interaction generally evident before age three (3) that adversely affects educational performance. This includes other pervasive developmental disorders. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or changes in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as defined in these rules. A child who manifests the characteristics of autism after age three (3) could be identified as having autism if the criteria herein are satisfied.
- (b) Criteria.
  - 1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  - 2. Score on a rating scale (normed for the appropriate diagnostic group) indicating the presence of an autism spectrum disorder.
  - 3. Medical, clinical, psychiatric, or school psychologist evaluation, or an assessment by a qualified person (e.g., psychometrist) trained in the area of autism evaluation.
  - 4. Evidence that communication/language skills and/or social skills adversely affect educational performance.
  - 5. Evidence of current characteristics/behaviors typical of an autism spectrum disorder.
- (c) Minimum Evaluative Components.
  - 1. Vision/hearing screening.
  - 2. A normed rating scale that is used to document the presence of an autism spectrum disorder.
  - 3. Comprehensive evaluation and report to be completed by a medical doctor, clinical psychiatrist, school psychologist or other qualified person (i.e., psychometrist) trained in the area of autism evaluation.
  - 4. Communication/language evaluation and a behavior rating scale and/or an adaptive behavior rating scale. Additional performance measures may include developmental, intellectual, achievement (individual or group), motor, criterion-referenced tests, curriculum-based assessments, work samples, portfolios, observation.
  - 5. Observation in both a structured and an unstructured school environment or natural setting and a structured interview with the parent/primary caregiver for all students in Grades K-12. An observation in a natural setting and a structured interview with the parents/primary caregiver for all preschool aged children.

**(2) Deaf-Blindness.**

- (a) Definition. Deaf-Blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or

children with blindness.

- (b) Criteria.
  - 1. Audiological data indicating that the individual has a hearing impairment.
  - 2. Optometric and/or ophthalmic data indicating that the individual has a visual impairment.
  - 3. Evidence of severe communication needs and evidence of severe educational needs related to the functional use of hearing and vision.
- (c) Minimum Evaluative Components.
  - 1. Audiological evaluation.
  - 2. Optometric/Ophthalmic evaluation.
  - 3. Performance measures such as developmental scores, diagnostic test(s), observations, communication evaluations, orientation and mobility assessments that document how the impairment adversely affects the educational performance of the child.

**(3) Developmental Delay.**

- (a) Definition. Developmental Delay means a delay that adversely affects daily life and/or educational performance in one or more of the following developmental areas:
  - 1. Adaptive,
  - 2. Cognitive,
  - 3. Communication,
  - 4. Social or emotional, and/or,
  - 5. Physical, and results in the need for special education and related services. A child may become eligible for this area of disability on his or her third birthday. A child identified with a developmental delay must be reevaluated prior to his or her ninth birthday to determine continued eligibility for special education services. At age nine, a child can no longer be eligible in the area of developmental delay and must be eligible in another area of disability in order to continue special education services. If a child turns nine during the school year and is eligible for an area of disability, that child may continue to receive special education services in his or her current program for the remainder of that school year. A child who turns nine during the school year and is not eligible for another area of disability will be served in general education programs for the remainder of the school year.
- (b) Criteria.
  - 1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  - 2. The standard score in one developmental domain must be at least two standard deviations below the mean (70 or below) on a standardized, norm-referenced instrument; or the standard scores on two or more developmental domains must be at least one and a half standard deviations below the mean (77 or below) on a standardized, norm-referenced instrument.
  - 3. Scores obtained according to the requirements in 2. of this section must be validated by supporting evaluations in the same identified area(s) of delay. If the standard score on the first instrument yields a delay of at least two standard deviations (70 or below) in one or more domains, then at least one domain must be validated (70 or below) by another norm-referenced or criterion-referenced instrument. If the standard score on the first instrument yields a delay of at least one and a half standard deviations (77 or below) in two or more domains, at least two of the domains must be validated (77 or below) by another norm-referenced or criterion-referenced instrument. When using a criterion-referenced instrument that does not yield standard scores, age equivalent scores may be used to determine the percent of delay and must be converted to standard scores. The score must be at least a 30% delay (two standard deviations below the mean) in one domain or a 25% delay (one and a half standard deviations below the mean) in two or more domains.
  - 4. Evidence that the developmental delay adversely affects the child's performance in age-appropriate activities must be documented.
- (c) Minimum Evaluative Components.

1. Vision/hearing screening.
2. A standardized, norm-referenced instrument(s) that evaluates all five developmental domains.
3. An additional standardized, norm-referenced instrument(s) or a criterion-referenced instrument that supports the one or two identified areas of delay from the first instrument according to the requirements.
4. Evidence of adverse effect.
  - (i) A family interview documenting strengths, needs, and concerns.
  - (ii) An observation of the child in an age-appropriate environment.
- (d) Public agencies may identify children in another disability area instead of using the area of developmental delay. However, if a public agency chooses to use the term developmental delay, which may only be used for ages 3-9, the agency must use the criteria above.

**(4) Emotional Disability.**

- (a) Definition. Emotional Disability means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
  1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
  2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  3. Inappropriate types of behavior or feelings under normal circumstances;
  4. A general pervasive mood of unhappiness or depression; or
  5. A tendency to develop physical symptoms or fears associated with personal or school problems.
 Emotional disability includes schizophrenia. The term does not include children who are socially maladjusted, unless it is determined that they have an emotional disability as defined herein.
- (b) Criteria.
  1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  2. Evidence that the problem is not due to intellectual, sensory, or health factors.
  3. Standard scores (total or composite) on two out of three of the same norm-referenced behavior rating scale must be at least two standard deviations above or below the mean (70, depending on the rating scale). Ratings from three or more scales will be obtained from at least three independent raters, one of whom may be the parent or the child through a self-report.
  4. Evidence that the emotional disability adversely affects the child's academic performance and/or social/emotional functioning in the school environment.
  5. Evidence that the emotional disability is exhibited over a long period of time (typically six months) and to a marked degree, and that the child's educational performance is adversely affected.
  6. Observational data that documents the emotional disability in two or more educational settings.
- (c) Minimum Evaluative Components.
  1. Vision/hearing screening.
  2. Individual intellectual evaluation.
  3. Administration of three of the same norm-referenced behavior rating scale by three or more independent raters who have had knowledge of the child for at least six weeks. One of the raters may be the parent or the child. If a self-report is used, it must be a version of the same behavior rating scale.
  4. Individual educational achievement evaluation and a statement of how the impairment adversely affects the child's academic performance and/or the child's social/emotional functioning.
  5. Documentation that the emotional disability is exhibited over a long period of time (typically six months) to a marked degree that adversely affects educational performance. Documentation must include teacher, parent and/or child interview(s); documentation of environmental, socio-cultural, and/or ethnic information (e.g., Environmental, Cultural and Economic Concerns checklist); and at least one of the following:
    - (i) Observation of the child in an educational environment other than the required observation.

- (ii) Counselor reports.
- (iii) Language evaluation.
- (iv) Anecdotal records from classroom teacher(s) or other LEA personnel.
- (v) Documentation may also include at least one of the following, if available:
  - (I) Clinical psychological/psychiatric reports.
  - (II) School psychologist reports.
  - (III) Medical reports.
- 6. Observation by a qualified professional in two or more educational settings (one structured setting and one unstructured setting).
- (d) Reevaluation for continued eligibility in the area of emotional disability. At the first reevaluation, if the IEP Team determines that additional data are needed and after conducting the assessments, the student no longer meets all criteria for emotional disability, the IEP Team must choose one of the following options:
  - 1. Based on existing evaluation data and/or additional data gathered, and documentation that student's behavior does not adversely affect educational performance, the IEP Team must determine that the student is no longer eligible for special education services in the area of emotional disability.
  - 2. Based on existing data and/or additional data gathered, the IEP Team may determine that the student continues to be eligible in the area of emotional disability based on the student's continued need for intensive support. The IEP Team must include on the eligibility report a written description of all behavioral strategies/interventions that are currently in place for the student. The IEP Team may determine that the student continues to be eligible for special education services in the area of emotional disability based on existing data and/or additional data gathered even though all criteria are not met (including scores two standard deviations above or below the mean, depending on the instrument, on two out of three behavior rating scales). The IEP Team may use this option only once at reevaluation. At the next reevaluation for continued eligibility, the IEP Team may not determine the student eligible for emotional disability unless all criteria are met (including scores two standard deviations above or below the mean, depending on the instrument, on two out of three behavior rating scales).

**(5) Hearing Impairment.**

- (a) Definition. Hearing Impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance. This term includes both deaf and hard-of-hearing.
- (b) Criteria.
  - 1. Evidence that vision screening results are satisfactory prior to proceeding with evaluations.
  - 2. Audiological data indicating that the child has a hearing impairment.
  - 3. Evidence that the educational performance is adversely affected by the disability.
- (c) Minimum Evaluative Components.
  - 1. Vision screening.
  - 2. Audiological evaluation.
  - 3. Performance measures such as group or individual intelligence scores, individual/group education achievement and/or diagnostic test(s), classroom observation, review of child's existing records (i.e., attendance, health).

**(6) Intellectual Disability.**

- (a) Definition. Intellectual Disability means significantly subaverage general intellectual functioning existing concurrently with significant limitations in adaptive behavior and manifested during the developmental period that adversely affects the child's educational performance.
- (b) Criteria.
  - 1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.

2. Total or full-scale intelligence quotient must be at least two standard deviations below the mean (70 or below).
3. Adaptive behavior scales.
- (i) Total score on at least one adaptive behavior scale must be at least two standard deviations below the mean (70 or below). A school version of an adaptive behavior scale is required to be completed. The public agency must make reasonable efforts to obtain a home version of the adaptive behavior scale. If a home version is not obtained, a second school version is required. The school version(s) and the home version of the adaptive behavior scale must be conducted using the same instrument. The home version of the adaptive behavior scale can be completed by the parent through a home visit, parent/teacher conference, telephone interview, or other mutually agreed upon arrangement. It is the responsibility of the public agency to ensure that the parent receives the assistance needed to complete the adaptive behavior scale. The public agency must make at least two attempts to have the parent complete the home version of the adaptive behavior scale within the sixty (60) days of receiving parental consent for initial evaluation and document such attempts on the eligibility report. However, the absence of a home version of the adaptive behavior scale must not delay the eligibility determination timeline.
- (ii) For students with individual intellectual scores in the significant cognitive disability range (55 and below), the total score on at least one adaptive behavior scale must be at least 1.5 standard deviations below the mean (77 or below). As in 3(i) above, a school version of an adaptive behavior scale is required and reasonable efforts to obtain a home version must be made.
4. Evidence that the disability adversely affects educational performance. (Note: Achievement scores at least one standard deviation below the mean should confirm and validate the intellectual functioning and adaptive behavior scales).
5. Determination of any environmental, cultural, language, or economic differences that might mask the student's true abilities. If at least one concern is noted, the team must consider administering a non-traditional intelligence test.
- (c) Minimum Evaluative Components.
  1. Vision/hearing screening.
  2. Individual intellectual evaluation.
  3. Individual adaptive behavior evaluation (Note: School and home versions must be conducted using the same instrument).
  4. Individual educational achievement evaluation (Note: Screening instruments may not be used to determine eligibility).
  5. Environmental, cultural, language, and economic information.
- (d) Exception to the current rule. Minority students in the seventh grade and older in the 2000-2001 school year and who were identified prior to July 1, 1999, will continue to be reevaluated under the criteria in this exception rule. Non-minority students in the fourth grade and older in the 2000-2001 school year and who were identified prior to July 1, 1999, will continue to be reevaluated under the criteria in this exception rule. However, if a qualified team, including the parent, deems it appropriate to use the criteria in the current rule, they may do so, but written justification for this action must be documented in the eligibility report.
  1. Definition. Intellectual Disability means significantly subaverage general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period that adversely affects the student's educational performance. Students classified as having intellectual disability must have a total or full-scale intelligence quotient of seventy (70) or below and deficits in overall adaptive behavior.
  2. Evaluations Required.
    - (i) Vision and hearing screening.
    - (ii) Adaptive behavior scale.
    - (iii) Individual educational achievement and/or diagnostic test(s).
    - (iv) Individual intellectual evaluation.

- (v) Professional judgment should be used to determine if the results of any of the above evaluations are reliable sources of information, or if other assessment data (e.g. developmental scales, systematic observation) may prove to be a more accurate indicator of the student's level of functioning.

**(7) Multiple Disabilities.**

- (a) Definition. Multiple Disabilities means concomitant impairments (such as intellectual disability-blindness, or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.
- (b) Criteria. The child must meet all eligibility criteria for two or more areas of disabilities as defined in these rules. Eligibility criteria for the two or more areas of disabilities must be documented on the eligibility report.
- (c) Minimum Evaluative Components. Refer to minimum evaluative components required under each area of disability.

**(8) Orthopedic Impairment.**

- (a) Definition. Orthopedic Impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). If a medical diagnosis is presented, the medical diagnosis alone is not enough to justify being identified in the area of orthopedic impairment. The impairment must adversely affect the educational performance of the child.
- (b) Criteria.
  - 1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  - 2. Evidence of an orthopedic impairment.
  - 3. Performance measures that document how the child's disability affects his or her involvement and progress in the general education curriculum or, for preschool children how the disability affects the child's participation in age-appropriate activities.
  - 4. A statement providing evidence that the orthopedic impairment adversely affects educational performance, and for initial evaluation for special education services only, evidence of interventions/accommodations that have been tried in regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful.
- (c) Minimum Evaluative Components.
  - 1. Vision/hearing screening.
  - 2. Documentation of the orthopedic impairment (medical diagnosis/physician's statement).
  - 3. Performance measures such as developmental scores, individual and/or group intelligence scores, individual and/or group educational achievement and/or diagnostic test(s) scores, classroom observations, motor assessments, criterion-referenced tests, curriculum-based assessments, review of child's existing records (i.e., attendance, health).
  - 4. A statement of how the impairment adversely affects the educational performance of the child, and for initial evaluations for special education services only, documentation of interventions/accommodations must include a written description of all interventions/accommodations that have been tried in the regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful. Interventions/accommodations may be documented through teacher interview(s) that are specific to the child's disability, classroom observation(s) that are specific to the child's disability, health records, anecdotal records, therapy evaluations, and intervention strategies.

**(9) Other Health Impairment.**

- (a) Definition. Other Health Impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome. If a medical diagnosis is presented, the medical diagnosis alone is not enough to justify being identified in the area of other health impairment. The impairment must adversely affect the educational performance of the child.
- (b) Criteria for Other Health Impairment.
  - 1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  - 2. Evidence of a health impairment.
  - 3. Performance measures that document how the child's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, how the disability affects the child's participation in age-appropriate activities.
  - 4. A statement providing evidence that the health impairment adversely affects the educational performance of the child and, for initial evaluation for special education services only evidence of interventions/accommodations that have been tried in regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful.
- (c) Minimum Evaluative Components for Other Health Impairment.
  - 1. Vision/hearing screening.
  - 2. Documentation of the health impairment (medical diagnosis/statement).
  - 3. Performance measures such as developmental scores, individual and/or group intelligence scores, individual and/or group education achievement and/or diagnostic test(s) scores, classroom observations, motor assessments, criterion-referenced tests, curriculum-based assessments, review of child's existing records, (i.e., attendance, health).
  - 4. A statement of how the impairment adversely affects the educational performance of the child and, for initial evaluations for special education services only, documentation of interventions/accommodations must include a written description of all interventions/accommodations that have been tried in the regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful. Interventions/accommodations may be documented through teacher interview(s) that are specific to the child's disability, classroom observation(s) that are specific to the child's disability, health records, anecdotal records, therapy evaluations, and intervention strategies.
- (d) Criteria for Other Health Impairment – Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity Disorder (ADHD).
  - 1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  - 2. Evidence that the health impairment adversely affects the educational performance of the child.
  - 3. Standard scores (total or composite) on two out of three of the same norm-referenced scale designed specifically to determine the presence of ADD or ADHD must be at least two standard deviations above or below the mean (70, depending on the rating scale). Ratings from three or more scales must be obtained from at least three independent raters, one of whom may be the parent.
  - 4. For initial evaluations only, evidence of interventions/accommodations that have been tried in regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful.
- (e) Minimum Evaluative Components for Other Health Impairment – ADD or ADHD.
  - 1. Vision/hearing screening.
  - 2. A statement of how the health impairment adversely affects the educational performance of the child and documentation of performance measures such as individual and/or group intelligence

scores, individual and/or group education achievement and/or diagnostic test(s) scores, classroom observations, criterion-referenced tests, curriculum-based assessments, review of child's existing records, (i.e., attendance, health, discipline).

3. Administration of three of the same norm-referenced behavior rating scale, ADD or ADHD scale by three or more independent raters who have had knowledge of the child for at least six weeks. One of the raters may be the parent or the child. If a self-report is used, it must be a version of the same behavior rating scale, ADD or ADHD scale.
4. For initial evaluations for special education services only, documentation of interventions/ accommodations must include a written description of all interventions/ accommodations that have been tried in the regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful. Interventions/accommodations may be documented through teacher interview(s) that are specific to the child's disability, classroom observation(s) that are specific to the child's disability, health records, anecdotal records, therapy evaluations, and intervention strategies.

**(10) Specific Learning Disability.**

- (a) Definition. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disability, or of environmental, cultural, or economic disadvantage.
- (b) General.
  1. When determining whether a child has a specific learning disability a public agency will not be required to take into consideration whether a child has a severe discrepancy between intellectual ability and achievement. A public agency may use a process based on the child's response to scientific, research-based intervention. A public agency may use other alternative research-based procedures for determining whether a child has a specific learning disability.
  2. For children suspected of having a specific learning disability, the Eligibility Committee and/or IEP Team must also include:
    - (i) The child's regular education teacher, or
    - (ii) If the child does not have a regular education teacher, a regular education teacher qualified to teach a child of his or her age, or
    - (iii) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age, and
    - (iv) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
- (c) Criteria.
  1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  2. A public agency may determine that a child has a specific learning disability if:
    - (i) The child does not achieve adequately for the child's age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade level standards: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving.
    - (ii) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph 2.(i) of this section when using a process based on the child's response to scientific, research-based intervention; or
    - (iii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both,

- relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments.
3. The group determines that the existence of specific learning disability is not the result of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage or limited English proficiency.
  4. Data to ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math.
  5. The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
  6. Documentation of work samples in the area of suspected disability.
- (d) Minimum Evaluative Components for Specific Learning Disability.
1. Vision/hearing screening.
  2. Documentation of a specific learning disability:
- (i) Documentation that the child does not achieve adequately for the child's age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving. Public agencies that choose to use the predicted achievement model must use either the table provided by the State Department of Education, Special Education Services, or the predicted achievement tables as provided by test publishers. Obtained achievement scores must be greater than one standard deviation unit or at least 16 points below the predicted achievement score using instruments with a common metric (mean of 100 and standard deviation of 15). Documentation of the severe discrepancy must be included in the written report/eligibility determination. When using the predicted achievement model to calculate the severe discrepancy, administer:
    - (I) An age-appropriate norm-referenced individually administered intelligence test (full scale score).
    - (II) An age-appropriate, individually administered, standardized, norm-referenced achievement test to determine a student's obtained achievement score(s) using one of the following two methods:
      - I. Using an obtained total test score from the administration of a test of achievement, or using an obtained test score from the administration of a test in the area of suspected disability (e.g., a test of reading, a test of math, a test of written expression).
      - II. Using obtained composite scores or subtest scores from the administration of two different achievement tests in the same area(s) of suspected disability and/or skill deficit;
  - (ii) Documentation that the child has participated in a process that assesses the child's response to scientific, research-based intervention including:
    - (I) The instructional strategies used and the student-centered data collected; and
    - (II) The documentation that the child's parents were notified about:
      - I. The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
      - II. Strategies for increasing the child's rate of learning; and
      - III. The parents' right to request an evaluation; or
  - (iii) Documentation of a pattern of strengths and weaknesses in performance, achievement, or both, to be relevant to the identification of a specific learning disability, using appropriate assessments.
3. Documentation that the existence of specific learning disability is not the result of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage or limited English proficiency must include but is not limited to adaptive behavior scale, behavior rating scale, environmental cultural economic concerns checklist.
  4. Data that demonstrate that the child was provided appropriate instruction in regular education

settings, delivered by qualified personnel; and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

5. Observation.
  - (i) The group responsible for determining whether a child has a specific learning disability, must decide to:
    - (I) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
    - (II) Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.
  - (ii) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.
6. Work samples in the area of difficulty.
  - (e) Specific documentation for the eligibility determination.
    1. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:
      - (i) Whether the child has a specific learning disability;
      - (ii) The basis for making the determination, including an assurance that the determination has been made in accordance with eligibility requirements;
      - (iii) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
      - (iv) The educationally relevant medical findings, if any;
      - (v) Whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards; and
      - (vi) Whether the child does not make sufficient progress to meet age or State-approved grade-level standards; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development;
      - (vii) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
      - (viii) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
        - (I) The instructional strategies used and the student-centered data collected; and
        - (II) The documentation that the child's parents were notified about:
          - I. The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
          - II. Strategies for increasing the child's rate of learning; and
          - III. The parents' right to request an evaluation.
    2. Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.
  - (f) Exception to the current rule. All children referred prior to July 1, 1998, and who have been identified as specific learning disabled using the simple standard score discrepancy criteria will continue to be reevaluated with this exceptions criteria until such time as the child is no longer eligible for services. However, if a qualified team, including the parent, deems it appropriate to use the current criteria, they may do so, but written justification for this action must be documented in the eligibility report. The simple standard score discrepancy criteria are as follows:
    1. Definition. Specific Learning Disabilities means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that

- may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. Children with specific learning disabilities will demonstrate a severe discrepancy between intellectual ability and achievement in one or more of the following areas: basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, oral expression, listening comprehension, or written expression.
2. Eligibility Criteria. The eligibility team must consider a variety of criteria in the identification of children with specific learning disabilities. No single criterion or specific number of characteristics can be used in identifying children with specific learning disabilities. Rather, the age-appropriateness of observed behaviors and the frequency, intensity, and duration of child's learning problems are critical in distinguishing specific learning disabilities from learning problems resulting from such factors as low motivation, underachievement, or inadequate instruction. The eligibility team must consider each of the following criteria in identifying children with specific learning disabilities. These criteria must be documented in the written report of the eligibility team.
    - (i) Appropriate Learning Opportunities. The eligibility team must determine that children have been provided appropriate learning opportunities commensurate with age and ability level. Prior to referral, efforts should be made in the regular school program to adapt or modify curriculum, materials, and/or instruction to accommodate the child for at least six weeks. These interventions might include, but are not limited to, changes in teaching methods, behavior management strategies, scheduling, grouping, seating arrangements, or consultation with providers of school psychological services. Documentation of prereferral intervention strategies must be provided for the eligibility team. This should identify the interventions that were implemented and document that the child still failed to achieve. Documentation must be included in the written report of the eligibility team.
    - (ii) Intellectual Functioning. A total or full-scale score must be used. When school personnel suspect that the intellectual ability is not accurately reflected by an obtained total or full-scale IQ score, other measures or procedures that assess cognitive abilities may be used. This documentation must be included in the written report of the eligibility team.
    - (iii) Deficit in Achievement. When provided with appropriate learning opportunities, children with specific learning disabilities do not achieve commensurate with age and ability level. Their achievement in one or more of the following areas is below expectancy: basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, oral expression, listening comprehension, and/or written expression. Assessment of actual achievement must be based on the teacher referral, classroom observation, work samples, individually administered diagnostic tests, and other related information. This documentation must be included in the written report of the eligibility team.
    - (iv) Severe Discrepancy Between Intellectual Ability and Achievement. Children with specific learning disabilities usually exhibit a severe discrepancy between intellectual ability and achievement/diagnostic test standard scores. The standard score on the individual achievement/diagnostic test(s) must be at least one standard deviation unit below the child's intelligence quotient through ten years of age and must be at least one and a half standard deviation units below the child's intelligence quotient if the child is eleven years of age or older. This documentation must be included in the written report of the eligibility team.
    - (v) Exclusion of Other Primary Conditions. The area of specific learning disabilities does not include children whose learning problems are primarily the result of visual, hearing or motor disabilities; mental disabilities; emotional disability; or environmental, cultural or economic disadvantage. This documentation must be included in the written report of the eligibility team.
  3. Evaluations Required.
    - (i) Vision and hearing screening.
    - (ii) Behavior rating scale.
    - (iii) Individual educational achievement and/or diagnostic test(s).
    - (iv) Individual intellectual evaluation.

- (v) Environmental, cultural, and economic concerns checklist.
- (vi) At least one team member other than the child's regular teacher must observe the child's academic performance in the regular classroom setting. In the case of a child of less than school age or out-of-school, a team member must observe the child in an environment appropriate for a child of that age.
- (vii) Work samples.
- (viii) Professional judgment should be used to determine if the results of any of the above evaluations are reliable sources of information, or if other assessment data (e.g., developmental scales, systematic observation) may prove to be a more accurate indicator of the child's level of functioning.

**(11) Speech or Language Impairment.**

- (a) Definition. Speech or Language Impairment means a communication disorder in the area of articulation, voice, fluency, or language that adversely affects a child's educational performance.
- (b) Criteria.
  - 1. Articulation.
    - (i) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
    - (ii) Errors are primarily characterized by substitutions, distortions, additions, and omissions. Phonological errors are in excess of developmental expectations and nondevelopmental processes may be noted. Errors are not stimulative. Connected speech may be unintelligible or may be intelligible only to familiar listeners or within known contexts.
    - (iii) Children who exhibit a tongue thrust are not eligible for speech/language services unless they also exhibit an associated articulation disorder. Speech/language services are not a required service for children who exhibit tongue thrust only.
    - (iv) A child does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.
    - (v) A child does not meet the criteria for an articulation disorder as a result of dialectal patterns or second language acquisition patterns.
  - 2. Voice.
    - (i) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
    - (ii) The child's voice is abnormal in vocal quality, pitch, loudness, resonance and/or duration and is inappropriate for the child's age and gender. Deviance is noticeable and distracting to any listener. The disorder adversely affects communication.
    - (iii) The voice disorder is not the result of a temporary problem such as normal voice change, allergies, asthma, tonsils and/or adenoid removal or other such conditions.
  - 3. Fluency.
    - (i) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
    - (ii) Abnormally dysfluent speech is observed during conversation and/or structured speaking tasks. Listeners are distracted by the child's dysfluent speech and distracting concomitant behaviors may be observed. The child may exhibit fear or avoidance of speaking.
    - (iii) The child's ability to communicate is adversely affected by the disorder. Developmental dysfluencies attributable to normal maturation patterns are not considered as a disability.
  - 4. Language.
    - (i) Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
    - (ii) Syntactic, morphologic, semantic, and/or pragmatic errors are observed. The child's ability to comprehend or use spoken language is adversely affected.
    - (iii) A total language standard score or quotient of at least two standard deviations below the mean (70 or below) on a standardized comprehensive language test containing both receptive and

- expressive components must be obtained.
- (iv) Dialectal differences or English as a second language is not considered a language disorder.
  - (c) Minimum Evaluative Components. Evaluations must be completed in the area of suspected disability as follows:
    - 1. Articulation/Phonological Disorder.
      - (i) A minimum of one standardized or formal measure that assesses the child's articulation/phonological skills.
      - (ii) Written documentation of a stimulability assessment as part of the standardized or formal measure or as a separate assessment.
      - (iii) Written documentation of the impact of intelligibility on connected speech.
      - (iv) Written documentation of an examination of oral structures and functioning.
      - (v) The eligibility team must obtain written documentation from the child's teacher and/or caregiver that the child's articulation skills adversely affect his or her involvement and/or progress in the general education curriculum and/or environment.
      - (vi) A summary of all required evaluations must be included on the eligibility report.
    - 2. Voice Disorder.
      - (i) A minimum of one formal measure that assesses the child's pitch, loudness, quality, inflection and resonance.
      - (ii) A written description of the child's voice patterns in a variety of tasks, in a minimum of two separate settings; one in the classroom and one in a non-structured environment that includes social/ peer interaction. Diagnostic observations should occur over a period of six weeks or less, if appropriate.
      - (iii) Medical evaluation by a physician, preferably an otorhinolaryngologist (ENT). Written documentation from the physician stating that the child is medically cleared to participate in voice therapy is required prior to the eligibility meeting. The public agency is responsible for the cost of the evaluation if no other means of payment is available.
      - (iv) The eligibility team must obtain written documentation from the child's teacher and/or caregiver that the voice disorder adversely affects his or her involvement and/or progress in the general education curriculum and/or environment.
      - (v) A summary of all required evaluations must be included on the eligibility report.
    - 3. Fluency Disorder.
      - (i) A minimum of one formal measure that assesses the child's dysfluency patterns.
      - (ii) A written description of the child's speaking patterns in more than one speaking task and in more than one setting.
      - (iii) Interviews with the child, teachers, and/or parent, documenting strengths and concerns regarding the fluency disorder.
      - (iv) The eligibility team must obtain written documentation from the child's teacher and/or caregiver that the fluency disorder adversely affects his or her involvement and/or progress in the general education curriculum and/or environment.
      - (v) A summary of all required evaluations must be included on the eligibility report.
    - 4. Language Disorder.
      - (i) A minimum of one standardized or formal comprehensive measure that assesses both receptive and expressive language skills must be administered. A child meets eligibility criteria when the total language standard score or quotient of at least two standard deviations below the mean (70 or below) on a standardized comprehensive language test containing both receptive and expressive components is obtained.
      - (ii) If the total language standard score does not meet the criteria of at least two standard deviations below the mean (70 or below) then a standard score at least two standard deviations below the mean (70 or below) in one area (receptive or expressive) of a comprehensive language test and a standard score or quotient at least two standard deviations below the mean (70 or below) on an assessment of a specific language component (semantics, syntax, morphology, processing, phonological awareness, or pragmatics) must be used. The assessment of a specific language

component must be in the same area as the deficit score on the comprehensive language test (i.e., if the deficit area is in the receptive component, then a test designed to assess receptive skills should be administered). If the standard score or quotient on the second measure is at least two standard deviations below the mean (70 or below), then the child's language disorder meets eligibility criteria.

- (iii) The eligibility team must obtain written documentation from the child's teacher and/or caregiver that the child's language impairment adversely affects his or her involvement and/or progress in the general education curriculum and/or environment.
- (iv) A summary of all required evaluations in each specific area must be included on the eligibility report.

**(12) Traumatic Brain Injury.**

- (a) Definition. Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.
- (b) Criteria.
  - 1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
  - 2. Documentation of a traumatic brain injury.
  - 3. Evidence that the traumatic brain injury adversely affects educational performance.
- (c) Minimum Evaluative Components. In emergency situations, professional judgment should be used to initially place the child.
  - 1. Vision/hearing screening.
  - 2. Medical/neurological evaluation.
  - 3. Individual educational achievement evaluation to serve as initial post-trauma baseline measure.

**(13) Visual Impairment.**

- (a) Definition. Visual Impairment means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
- (b) Criteria.
  - 1. Evidence that hearing screening results are satisfactory prior to proceeding with evaluations.
  - 2. Optometric/ophthalmic data indicating that the individual has a visual impairment.
  - 3. Evidence of visual functioning that adversely affects educational performance as evaluated by a certified vision specialist.
- (c) Minimum Evaluative Components.
  - 1. Hearing screening.
  - 2. Optometric and/or ophthalmic evaluation indicating that the individual has a visual impairment.
  - 3. Documentation of educational problems that even after appropriate accommodations, the disability continues to affect educational performance. Educational problems may be assessed by a certified vision specialist through one or more of the following:
    - (i) A learning media assessment,
    - (ii) Functional vision assessment, and/or
    - (iii) An orientation and mobility evaluation.

## OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

### PART 104

### NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

#### Subpart D — Preschool, Elementary, and Secondary Education

##### 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

##### 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

##### 104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education — (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) Residential placement. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

#### **104.34 Educational setting.**

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

#### **104.35 Evaluation and placement.**

(a) Pre-placement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is

made in conformity with 104.34.

(d) **Reevaluation.** A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

#### **104.36 Procedural safeguards.**

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

#### **104.37 Nonacademic services.**

(a) **General.** (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) **Counseling services.** A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are non-handicapped students with similar interests and abilities.

(c) **Physical education and athletics.** (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

#### **104.38 Preschool and adult education.**

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

#### **104.39 Private education.**

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within that recipient's program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to non-handicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

## LETTER REQUESTING AN EVALUATION

June 1, 2014

Mrs. Henrietta Williams  
Special Education Coordinator  
Camellia School District  
123 Main Street  
Camellia, AL 55555

Dear Mrs. Williams:

I am the parent of Thomas Pickett. He is a student at Camellia Elementary School and is in the 5th grade.

Thomas is having problems with his school work. *(Describe your concerns. For example: "Thomas's math grades are very poor and he hasn't done well on the standardized tests he's taken. Also, he has trouble paying attention and can't seem to follow directions.")*

I would like to have him evaluated to see if he has a disability and whether he needs special education and related services.

Please let me know when the school's evaluation team will meet to discuss this evaluation request so that I can be in attendance and sign the consent for initial evaluation. I can be reached at 44 Emerson Street, Camellia, AL 55555 or by phone at 205-555-1234.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Sally Pickett

cc: Tom Bibb, Camellia Elementary School  
Principal

Marion Flagg, Camellia School District  
Superintendent

## LETTER REQUESTING A REEVALUATION

June 1, 2014

Mrs. Henrietta Williams  
Special Education Coordinator  
Camellia School District  
123 Main Street  
Camellia, AL 55555

Dear Mrs. Williams:

I am the parent of Thomas Pickett. He is a student at Camellia Elementary School and is in the 5th grade. My child receives special education services.

I recently reviewed Thomas's evaluation and believe it is *(Describe your concerns. For example: out of date, incomplete, inappropriate due to changes in his learning needs).*

I would like to have Thomas reevaluated.

Please contact me within ten school days regarding this matter. I can be reached at 44 Emerson Street, Camellia, AL 55555 or by phone at 205-555-1234.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Sally Pickett

cc: Tom Bibb, Camellia Elementary School  
Principal

Marion Flagg, Camellia School District  
Superintendent

## LETTER REQUESTING AN INDEPENDENT EDUCATIONAL EVALUATION

June 1, 2014

Mrs. Henrietta Williams  
Special Education Coordinator  
Camellia School District  
123 Main Street  
Camellia, AL 55555

Dear Mrs. Williams:

I am the parent of Thomas Pickett. He is a student at Camellia Elementary School and is in the 5th grade. My child receives special education services.

Recently, you completed an educational evaluation of Thomas. ***(Describe the evaluation: full evaluation, an assistive technology evaluation, Functional Behavioral Assessment, etc.)***

I disagree with the results of your evaluation. I am requesting an independent educational evaluation.

I am aware that you have an obligation to pay for this evaluation at public expense or request a due process hearing to show that your results are appropriate.

Please contact me within ten school days regarding this matter.

I can be reached at 44 Emerson Street, Camellia, AL 55555 or by phone at 205-555-1234.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Sally Pickett

cc: Tom Bibb, Camellia Elementary School  
Principal

Marion Flagg, Camellia School District  
Superintendent

## LETTER REQUESTING REVIEW AND REVISION OF IEP

June 1, 2014

Mrs. Henrietta Williams  
Special Education Coordinator  
Camellia School District  
123 Main Street  
Camellia, AL 55555

Dear Mrs. Williams:

I am the parent of Thomas Smith. He is a student at Camellia Elementary School and is in the 5th grade. My child receives special education services.

I recently reviewed Thomas's IEP which was written in May, 2014. I believe that it is ***(Describe your concerns. For example: out of date, incomplete, based on insufficient evaluation information, does not address all of his needs, not sufficient to enable him to make adequate educational progress)***.

I would like to schedule a meeting so that the IEP Team can review his IEP and revise it as appropriate.

I understand that under Alabama law, this meeting must be scheduled within thirty days of this request and held at a time and place that is mutually convenient for me and the rest of the IEP Team.

Please contact me within ten school days regarding this matter. I can be reached at 44 Emerson Street, Camellia, AL 55555 or by phone at 205-555-1234.

Thank you for your help. I look forward to meeting with the Team.

Sincerely,

Sally Pickett

cc: Tom Bibb, Camellia Elementary School  
Principal

Marion Flagg, Camellia School District  
Superintendent

## LETTER REQUESTING RECORDS FROM SCHOOL

June 1, 2014

Mrs. Henrietta Williams  
Special Education Coordinator  
Camellia School District  
123 Main Street  
Camellia, AL 55555

Dear Mrs. Williams:

I am the parent of Thomas Pickett. He is a student at Camellia Elementary School and is in the 5th grade. My child receives special education services.

I would like a copy of Thomas's educational records. The documents I would like are his most recent evaluation and special education eligibility materials and the last two year's worth of grade transcripts, standardized testing results, meeting notices, PST intervention records, IEP progress reports, disciplinary records, IEPs, functional behavioral assessments and behavior modification plans.

Please contact me within ten school days regarding this matter. I can be reached at 44 Emerson Street, Camellia, AL 55555 or by phone at 205-555-1234.

I look forward to hearing from you soon.

Sincerely,

Sally Pickett

cc: Tom Bibb, Camellia Elementary School Principal  
Marion Flagg, Camellia School District Superintendent

## REQUEST FOR PRIOR WRITTEN NOTICE

### School's Refusal to Take Action

June 1, 2014

Mrs. Henrietta Williams  
Special Education Coordinator  
Camellia School District  
123 Main Street  
Camellia, AL 55555

Dear Mrs. Williams:

I am the parent of Thomas Pickett. He is a student at Camellia Elementary School and is in the 5th grade. He receives special education services.

At an IEP meeting on May 29, 2014, I asked for *(Describe your request. For example: "Thomas's one-on-one speech services to be increased from once monthly to once weekly")*.

The IEP team refused to make this change. Since the team's action constitutes a refusal to change the provision of a free appropriate public education under the IDEA, you must provide me with prior written notice. This notice, which must be provided within a reasonable period of time after this decision, must contain all of the following:

- an explanation of why the school refused to take action;
- a description of any options the school considered and the reasons why those options were rejected;
- a description of each evaluation procedure, test, record, or report the school used as a basis for the refusal to honor my request; and
- a description of any other factors that are relevant to the school's refusal.

Please send this notice to me at 44 Emerson Street, Camellia, AL 55555.

I am eager to work with you to resolve this disagreement and will contact you after I receive the notice to discuss my concerns. Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Sally Pickett

cc: Tom Bibb, Camellia Elementary School Principal  
Marion Flagg, Camellia School District Superintendent

## REQUEST FOR PRIOR WRITTEN NOTICE

### School's Proposal to Take Action

June 1, 2014

Mrs. Henrietta Williams  
Special Education Coordinator  
Camellia School District  
123 Main Street  
Camellia, AL 55555

Dear Mrs. Williams:

I am the parent of Thomas Pickett. He is a student at Camellia Elementary School and is in the 5th grade. He receives special education services. At an IEP meeting on May 29, 2014, the IEP Team proposed (***Describe the proposed change. For example: "to move Thomas from a resource room setting for his reading instruction to the general education classroom"***).

I disagreed with this proposal. Since the team's action constitutes a proposal to change the provision of a free appropriate public education under the IDEA, you must provide me with prior written notice. This notice must contain all of the following:

- an explanation of why the school proposes to take this action;
- a description of any options the school considered and the reasons why those options were rejected;
- a description of each evaluation procedure, test, record, or report the school used as a basis for the school's proposal; and
- a description of any other factors that are relevant to the school's proposal.

Please send this notice to me at 44 Emerson Street, Camellia, AL 55555. This notice must be provided to me in a reasonable time period before the proposal recommended by the IEP team takes effect. I am eager to work with you to resolve this disagreement and will contact you after I receive the notice to discuss my concerns. Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Sally Pickett

cc: Tom Bibb, Camellia Elementary School Principal  
Marion Flagg, Camellia School District Superintendent

# REQUEST FOR IMPARTIAL DUE PROCESS HEARING

Date: \_\_\_\_\_

Dr. Tommy Bice  
State Superintendent of Education  
Alabama State Department of Education  
Post Office Box 302101  
Montgomery, Alabama 36130-2101

Dear Dr. Bice

I disagree with one or more of the special education decisions that have been made regarding:

Student \_\_\_\_\_

School Attends \_\_\_\_\_

School System \_\_\_\_\_

I am requesting an impartial due process hearing. My concern(s) and proposed resolution(s) are written in the boxes below.

Concerns:

---



---

Proposed Resolution(s):

---



---

Sincerely,

\_\_\_\_\_  
Signature of Person Requesting Hearing  
( ) Parent ( ) Student

\_\_\_\_\_  
Street Address, Route Number, or Post Office Box Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number

cc: Local Education Agency Superintendent

## 60-DAY SPECIAL EDUCATION COMPLAINT LETTER

Date: \_\_\_\_\_

Ms. Crystal Richardson  
Director, Special Education Services  
Alabama State Department of Education  
Post Office Box 302101  
Montgomery, Alabama 36130-2101

Dear Ms. Richardson:

I believe the \_\_\_\_\_ School System has violated requirements for special education under Individuals With Disabilities Education Improvement Act of 2004 (IDEA) and/or the Alabama Administrative Code, Special Education Chapter. I am filing a 60-Day Special Education Complaint.

I understand that the school system has the right with my consent to mediation to attempt to resolve my concerns about special education. I consent to participate in mediation and to an extension in the complaint timeline if needed in order for mediation to be scheduled and convened.

☐ YES ☐ NO Signature \_\_\_\_\_ Date \_\_\_\_\_

The violation(s) of special education requirements not more than one year prior to the date the complaint is received; the facts on which the statement(s) is based, and proposed resolution(s) are written in the boxes below.

Violation(s):

Facts about the violation(s):

**60-DAY SPECIAL EDUCATION COMPLAINT LETTER** (continued)

The name and address of the residence of the child:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Name of school child attends: \_\_\_\_\_

(If the child is homeless, provide any available contact information.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Description of the problem of the child, including facts relating to the problem:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Person Requesting Hearing  
( ) Parent ( ) Student

\_\_\_\_\_  
Street Address, Route Number, or Post Office Box Number

\_\_\_\_\_

\_\_\_\_\_  
City, State, Zip

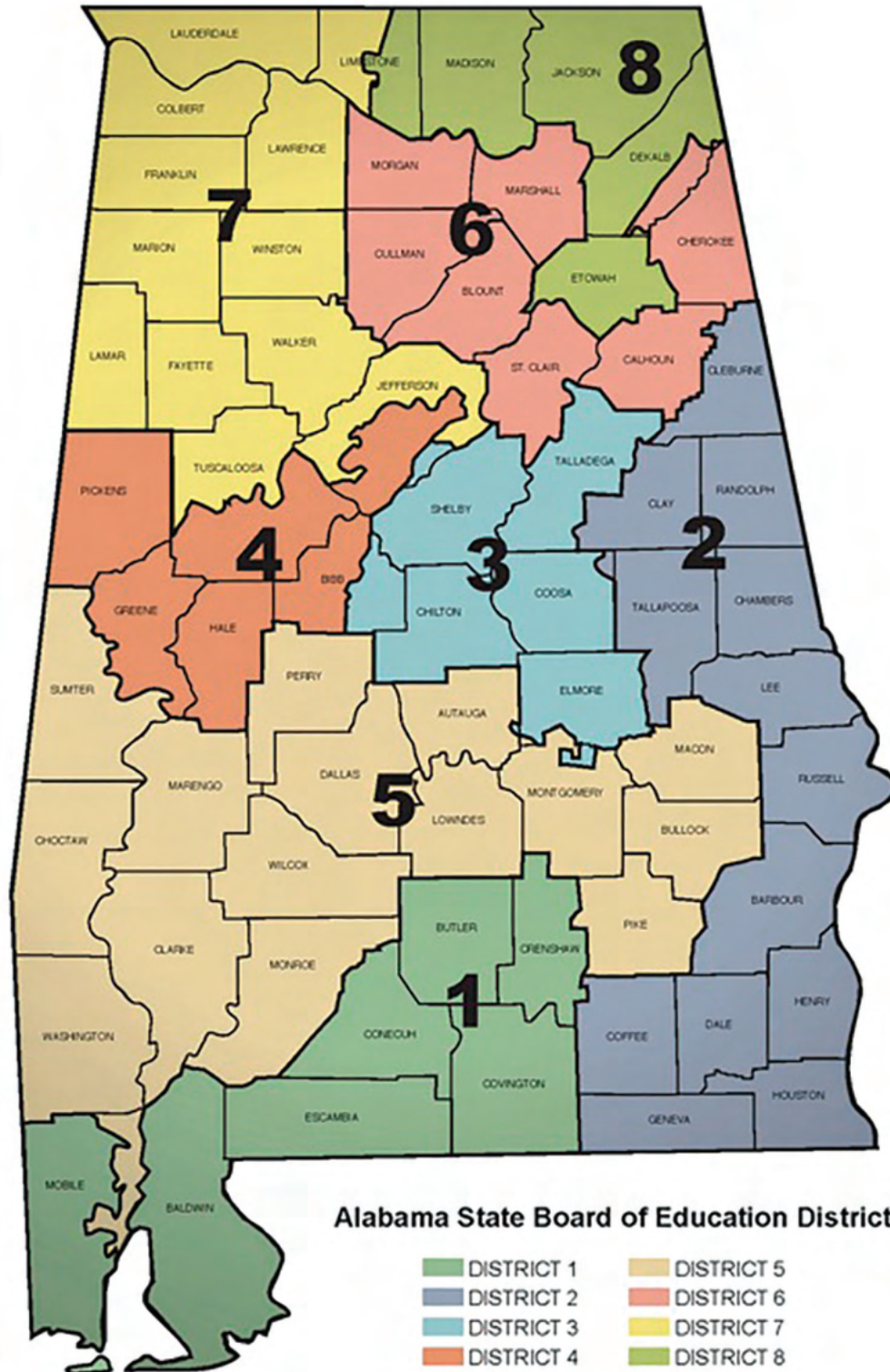
\_\_\_\_\_  
Telephone Number

cc: Local Education Agency Superintendent

## Alabama State Board of Education

Alabama State Board of Education District

Map can be located on the web at: <http://web.alsde.edu/home/SchoolInfo/CountyMap.aspx>



Map effective date: November 2011

**Board President**

Governor Kay Ivy  
 State Capitol  
 Room N-104  
 600 Dexter Avenue  
 Montgomery, AL 36130  
 Phone: (334) 242-7100  
 Fax: (334) 242-0937

**Secretary and Executive Officer**

Dr. Eric Mackey Ed.D.  
 State School Superintendent  
 Alabama Dept. of Education  
 50 North Ripley Street  
 P.O. Box 302101  
 Montgomery, AL 36104  
 Phone: (334) 334-694-4900  
 Web: [www.alsde.edu](http://www.alsde.edu)  
 Email: [superintendent@alsde.edu](mailto:superintendent@alsde.edu)

## State School Board of Education Districts

**District One**

Jackie Zeigler  
 Address: \_\_\_\_\_  
 Bay Minette, AL  
 Phone: 251-605-5139  
 Email: [jzeigler3071@gmail.com](mailto:jzeigler3071@gmail.com)

**District Two**

Tracie West  
 526 Beatrice Road  
 Kinsey, AL 36303  
 Phone: (334) 524-0880  
 Fax: (334) 794- 8024  
 Email: [traciwest3@gmail.com](mailto:traciwest3@gmail.com)

**District Three**

Stephanie Bell  
 Vice President  
 3218 Lancaster Lane  
 Montgomery, AL 36106  
 Phone: (334) 467-5981  
 Fax: (334) 260-0100  
 Email: [stephaniewbell@gmail.com](mailto:stephaniewbell@gmail.com)

**District Four**

Yvette Richardson, Ed.D.  
 Post Office Box 785  
 Fairfield, AL 35064  
 Phone: (205) 527-7186  
 Fax: (205) 923-7262  
 Email: [yvetterichardson348@gmail.com](mailto:yvetterichardson348@gmail.com)

**District Five**

Tonya S. Chestnut, Ed.D.  
 2634 Airwood Drive  
 Montgomery, AL 36108  
 Phone: (334) 327-8648  
 Email: [tonyaschestnut@gmail.com](mailto:tonyaschestnut@gmail.com)

**District Six**

Marie Manning  
 Post Office Box 1584  
 Decatur, AL 35602  
 Phone: (256) 960-3412  
 Email: [cokermann@earthlink.net](mailto:cokermann@earthlink.net)

**District Seven**

Belinda McRae  
 261 Newman Drive  
 Millport, AL 35576  
 Phone: (256) 335-9558  
 Email: [mrs.mc9321@gmail.com](mailto:mrs.mc9321@gmail.com)

**District Eight**

Wayne Reynolds Ed.D  
 Post Office Box 18572  
 Huntsville, AL 35801  
 Phone: (256) 509-4822  
 Fax: (888) 531-1312  
 Email: [drwaynereynolds@aol.com](mailto:drwaynereynolds@aol.com)

**Alabama State Board of Education District  
 contact information can be located on the  
 web at <http://www.alsde.edu>**

## Resource List

### Federal Government Officials

#### Senate

Honorable Jeff Sessions (R)  
326 Russell Senate Office Building  
Washington, DC 20510  
(202) 224-4124  
(202) 224-3149 (Fax)  
E-mail: <http://sessions.senate.gov/email/contact.cfm>  
Web: <http://sessions.senate.gov>

Honorable Richard C. Shelby (R)  
304 Russell Senate Office Building  
Washington, DC 20510  
(202) 224-5744  
(202) 224-3416 (Fax)  
E-mail: [senator@shelby.senate.gov](mailto:senator@shelby.senate.gov)  
Web: <http://shelby.senate.gov>

#### House of Representatives

*To find the contact information for your representative in the House of the U.S. Congress, visit the House's Web site at: [www.house.gov](http://www.house.gov), or call: (202) 224-3121; (202) 225-1904 (TTY).*

### State Government Officials

Governor Kay Ivy  
State Capitol  
Room N-104  
600 Dexter Avenue  
Montgomery, AL 36130  
Phone: (334) 242-7100  
Fax: (334) 242-0937

For **Alabama State Senators**, call (334) 242-7800 or go to: [http://www.senate.gov/general/contact\\_information/senators\\_cfm.cfm](http://www.senate.gov/general/contact_information/senators_cfm.cfm)

For **Alabama House Members**, call (334) 242-7600 or go to: <http://www.house.gov/writerep/>

### State Developmental Disabilities Network University Center for Excellence in Developmental Disabilities

Harold Sontheimer  
Director  
Civitan International Research Center  
University of Alabama at Birmingham  
1530 3rd Avenue South  
Birmingham, AL 35294  
Phone: (205) 934-8900  
Fax: (205) 975-6330  
Web: [www.circ.uab.edu](http://www.circ.uab.edu)

### Alabama Council for Developmental Disabilities

Elmyra Jones-Banks  
Executive Director  
Alabama Council for Developmental Disabilities  
RSA Union Building  
100 N. Union Street, Suite 498  
P.O. Box 301410  
Montgomery, AL 36130-1410  
(334) 242-3976; (800) 232-2158  
E-mail: [myra.jones@mh.alabama.gov](mailto:myra.jones@mh.alabama.gov)  
Web: [www.acdd.org](http://www.acdd.org)

### Protection and Advocacy System

James A. Tucker  
Executive Director  
Alabama Disabilities Advocacy Program (ADAP)  
Box 870395  
The University of Alabama  
Tuscaloosa, AL 35487  
(205) 348-4928; (800) 826-1675  
Email: [adap@adap.ua.edu](mailto:adap@adap.ua.edu)  
Web: [www.adap.net](http://www.adap.net)

### Alabama State Department of Education

Superintendent's Office  
Dr. Thomas R. Bice  
State School Superintendent  
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Montgomery, AL 36130  
Phone: (334) 242-9700  
Fax: (334) 242-9708  
Web: [www.alsde.edu](http://www.alsde.edu)

**Special Education Services**

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 50 North Ripley Street  
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**State Intervention Programs for Young Children (Birth to Age 5)****Programs for Infants and Toddlers with Disabilities: Under 3 Years Old**

Melinda Davis, Director  
 Department of Rehabilitation Services  
 Division of Early Intervention  
 2129 East South Boulevard  
 Montgomery, AL 36116  
 (334) 281-8780  
 (800) 543-3098  
 (800) 499-1816 (TTY)  
 (866) 450-2838 (En Español)  
[Melinda.davis@rehab.alabama.gov](mailto:Melinda.davis@rehab.alabama.gov)  
 Web: [www.rehab.alabama.gov/ei](http://www.rehab.alabama.gov/ei)

**Vocational Rehabilitation Services****Department of Rehabilitation Services**

Dr. Cary Boswell, Commissioner  
 2129 East South Boulevard  
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 E-mail: [cary.boswell@rehab.alabama.gov](mailto:cary.boswell@rehab.alabama.gov)  
 Web: [www.rehab.alabama.gov](http://www.rehab.alabama.gov)

**Client Assistance Program**

Rachel Hughes, Director  
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 2125 East South Boulevard  
 Montgomery, AL 36116  
 (800) 228-3231  
 Fax: (800) 441-7607  
 E-mail: [rachel.hughes@rehab.alabama.gov](mailto:rachel.hughes@rehab.alabama.gov)

**Health Care and Respite****Programs for Children with Special Health Care Needs**

Melinda Davis  
 Alabama Department of Rehabilitation Services  
 Children's Rehabilitation Service  
 2129 East South Boulevard  
 P.O. Box 11586  
 Montgomery, AL 36111-0586  
 (334) 281-8780  
 (800) 441-7607  
 E-mail: [melinda.davis@rehab.alabama.gov](mailto:melinda.davis@rehab.alabama.gov)  
 Web: [www.rehab.alabama.gov/crs](http://www.rehab.alabama.gov/crs)

**State CHIP Program (Health care for low-income uninsured children)**

Children's Health Insurance Program  
Alabama Department of Public Health  
201 Monroe Street, Suite 250  
Montgomery, AL 36104  
(334) 206-5568  
(877) 774-9521  
(334) 206-6433 (Fax)  
Web: [www.adph.org/allkids](http://www.adph.org/allkids)

**Program for Children and Youth who are Blind or Visually Impaired, Deaf or Hard of Hearing, or Deaf-Blind**

Michelle Jones, Regional Director  
Alabama Institute for Deaf and Blind  
1050 Government Street  
Mobile, AL 36604  
(251) 432-7777(V/TTY)  
E-mail: [jones.michelle@aidb.state.al.us](mailto:jones.michelle@aidb.state.al.us)  
Web: [www.AIDB.org](http://www.AIDB.org)

**Special Format Library**

Dorothy Baker  
Alabama Regional Library for the Blind and Physically Handicapped  
6030 Monticello Drive  
Montgomery, AL 36130-6000  
(334) 213-3912  
(800) 392-5671  
E-mail: [dbaker@apls.state.al.us](mailto:dbaker@apls.state.al.us)  
Web: <http://statelibrary.alabama.gov>

**Respite Care**

Linda Lamberth, Project Manager  
Alabama Lifespan Respite Resource Network  
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Anniston, AL 36207  
(256) 237-3683  
(866) 737-8252  
E-mail: [alabamarespite@aol.com](mailto:alabamarespite@aol.com)  
Web: <http://alabamarespite.org>

**Transition to Post-High School****The National Center on Secondary Education and Transition (NCSET)**

National Center on Secondary Education and Transition  
Institute on Community Integration  
University of Minnesota  
6 Pattee Hall  
150 Pillsbury Drive SE  
Minneapolis, MN 55455  
(612) 624-2097  
Fax: (612) 624-9344  
email: [ncset@umn.edu](mailto:ncset@umn.edu)  
Web: <http://www.ncset.org>

**National Alliance for Secondary Education and Transition (NASET)**

c/o National Center on Secondary Education and Transition  
Institute on Community Integration  
University of Minnesota  
6 Pattee Hall  
150 Pillsbury Drive SE  
Minneapolis, MN 55455  
(612) 624-2097  
email: [ncset@umn.edu](mailto:ncset@umn.edu)  
Web: <http://www.nasetalliance.org/>

**Transition Coalition**

University of Kansas  
Dept. of Special Education  
Joseph R. Pearson Hall  
1122 W. Campus Rd. Room 153A  
Lawrence, KS 66045  
(785) 864-6414 (Voice)  
E-mail: [transition@ku.edu](mailto:transition@ku.edu)  
Web: <http://www.transitioncoalition.org>

**National Secondary Transition Technical Assistance Center (NSTTAC)**

Special Ed. & Child Development  
UNC Charlotte  
9201 University City Blvd.  
Charlotte, NC 28223  
(704) 687-8606  
(704) 687-6327(TTY)  
(704) 687-2916 ((FAX))  
email: [nsttacmail@uncc.edu](mailto:nsttacmail@uncc.edu)  
Web: <http://www.nsttac.org/>

**The Full Life Ahead Foundation**

2908 Clairmont Avenue South  
 Birmingham, AL 35205  
 (205) 439-6534  
 (866) 700-2026 (Fax)  
 email: [fulllifeahead@gmail.com](mailto:fulllifeahead@gmail.com)  
 Web: <http://www.fulllifeahead.org>

**Assistive Technology****STAR (Statewide Technology Access and Response for Alabamians with Disabilities)**

Alabama Department of Rehabilitation Services  
 Mailing Address: 602 S. Lawrence St.  
 Montgomery, AL 36104  
 Physical Address: 560 S. Lawrence St.  
 Montgomery, AL 36104  
 (334) 293-7143  
 (800) 499-1816 (TTY)  
 (800) 782-7656 (toll free)  
 Web: [www.rehab.state.al.us/star](http://www.rehab.state.al.us/star)

**Technology Assistance for Special Consumers (T.A.S.C.)**

1856 Keats Drive  
 Huntsville, AL 35810  
 (256) 859-8300  
 (256) 859-4332  
 Email: [tasc@hiwaay.net](mailto:tasc@hiwaay.net)  
 Web: <http://tasc.ataccess.org>

**National Assistive Technology Technical Assistance Partnership (NATTAP)**

1700 North Moore Street, Suite 1540  
 Arlington, VA 22209-1903  
 (703) 524-6686  
 (703) 524-6639 (TTY)  
 (703) 524-6630 (Fax)  
 Web: [www.resnaprojects.org](http://www.resnaprojects.org)

**Alliance for Technology Access**

1119 Old Humboldt Rd.  
 Jackson, TN 38305  
 (731) 554-5282  
 (731) 554-5284 (TTY)  
 (731) 554-5283 (Fax)  
 email: [atainfo@ataccess.org](mailto:atainfo@ataccess.org)  
 Website: <http://www.ataccess.org>

**Telecommunications Relay Services for Individuals who are Deaf, Hard of Hearing, or with Speech Impairments**

(800) 548-2547 (V)  
 (800) 548-2546 (TTY); 771(TTY)  
 (888) 229-5746 (Speech to Speech-English)  
 (866) 260-9470 (Speech to Speech- Spanish)

**Children's Mental Health****Alabama Family Ties/Statewide Family Network for Families of Youth with Emotional Disturbance**

Lisa King  
 Board President  
 P.O. Box 509  
 115 E. Washington St.  
 Demopolis, AL 36732  
 (334) 287-3119  
 (877) 834-0615  
 Email: [help@alfamilyties.org](mailto:help@alfamilyties.org)  
 Web: [www.alfamilyties.org](http://www.alfamilyties.org)

**State Mental Health Representative for Children and Youth**

Office of Children's Services  
 Alabama Department of Mental Health  
 P.O. Box 301410  
 Montgomery, AL 36130-1410  
 (334) 353-7110  
 Web: [www.mh.alabama.gov](http://www.mh.alabama.gov)

**Alabama Department of Mental Health**

Jim Reddoch  
 Commissioner  
 RSA Union Building  
 P.O. Box 301410  
 Montgomery, AL 36130-1410  
 (334) 242-3454  
 Toll Free: 1-800-367-0955  
 Web: <http://www.mh.alabama.gov/>

**Americans with Disabilities Act  
Regional ADA & IT Technical  
Assistance Center**

Pamela Williamson, Project Director  
DBTAC, Southeast ADA Center: Southeast  
DBTAC  
A Project of the Burton Blatt Institute- Syracuse  
University  
1419 Mayson Street  
Atlanta, GA 30324  
(800) 949-4232 (V/TTY) (Toll Free) [AL, FL, GA,  
KY, MS, NC, SC, TN]  
(404) 541-9001 (V/TTY)  
(404) 541-9002 ((FAX))  
Email: sedbtacproject@law.syr.edu  
Web: www.adasoutheast.org

**Alabama Department  
of Rehabilitation Services**

Cary Boswell, Commissioner  
602 S. Lawrence St.  
Montgomery, AL 36104  
(334) 293-7500  
(800) 441-7607  
Fax: (334) 293-7383  
Web: www.rehab.state.al.us/ada

## Preparing for Your Child's IEP Meeting

### A “How-To” Guide

**Collect and review documents**

There are some basic documents you want to collect and review to prepare for an IEP meeting. It's likely that you already have all or most of them.

1. Review your child's current **IEP** before the meeting. What were his goals for this year and what services was he being provided to achieve them?
2. Look at your child's special education **eligibility report**. This is the form which you would have received the last time your child's special education eligibility was determined. It lists all the tests that were done to determine whether your child was eligible for services and in which disability category. If your child has had any testing done recently that isn't on the eligibility report, ask for copies of that new data so you can review it ahead of the meeting.
3. On a regular basis, your child's school has to give you a **progress report** on how well your child is doing towards meeting his annual IEP goals. You'll usually get the IEP progress reports when you receive your child's regular report card. Look at the progress reports. How has your child been doing this year? Has he been progressing as everyone hoped? If not, think about why not. Make a note to address any lack of progress at the IEP meeting.
4. Review your child's recent **report cards**. If he's not doing well, think about whether he may need any additional supports. Again, be prepared to bring up these concerns at your meeting.
5. Has your child taken any state **standardized testing** in the last year or so? If so, make sure you have and review those testing results. What do they say about his performance as compared to his peers in his grade level?
6. Pull out any **work samples** you've collected; what do they say about his mastery of the regular course of study and his IEP goals?

1. If your child has behavioral challenges, review any **behavior data** that might have been collected during the year or any disciplinary notices. If you think you're missing some disciplinary notices, ask the school to run a discipline report on your child.
2. Review **attendance records**. Has your child struggled with attendance this year and has it been impacting his school performance? His attendance should be noted on his transcript or you can ask the school to run an attendance report.
3. Finally, if your child sees any **outside providers** (example: physical therapists or mental health clinicians) it might be helpful to review any information they have regarding your child.

### Collect information from people

Every day, at dinner or at bedtime or in the carpool, you've talked to your child about school. Now is the time to revisit some of the ideas and feelings he's shared with you. What does your child like AND dislike about school. What's easy for him? What's hard for him?

Talk to school staff. What insights do they have about how your child is doing in school? Don't focus just on his classroom teachers; talk to his guidance counselor and other school personnel for input.

Finally, if your child sees any outside providers like a physical therapist or a mental health clinician, that person might have her own thoughts on how your child is progressing in certain skill areas or thoughts on unaddressed school needs.

### What is your child studying?

Take a look at the Alabama courses of study (sometimes referred to as content standards). You can find them in these locations on the web:

- <http://alex.state.al.us/>
- <http://web.alsde.edu/home/Sections/SectionDocuments.aspx?SectionID=65&Subsection=16>

At these websites, you'll see the courses of study in all the subjects taught in Alabama, including math, English, science and social studies. Review the courses of study to get a general

idea of what your child is expected to be able to learn in the coming school year. (If you don't have access to the internet, your child's school should have copies of the courses of study that you can review.)

Think about your child's achievement levels and abilities in relation to courses of study. Is there a gap between what he knows now and what he's expected to be able to do in the coming year? His IEP should be designed to eliminate or shrink that gap as much as possible. For example, what reading skills are second graders expected to learn? How prepared is your 1st grader to learn those specific skills when she returns to school in the fall? Where and how will he need to be supported? These are things that should be discussed at your child's IEP meeting.

### Understand your Rights

If you have questions about your and your child's rights under the law, contact ADAP.

### Big Picture Planning

As you are thinking about your child's schooling and how special education services can help him, remember that special education is about all of a child's needs.

Many parents believe that special education is just about academics. It's not. It's about all your child's disability-related needs and how they impact his schooling.

For example, perhaps your child has mobility issues which affect his ability to access school programming – that's something that should be addressed in his IEP.

Or, maybe he has behavior problems and he's getting suspended all the time. Or, he's interrupting the learning of others with his behavior. In either situation, those behavior problems should be addressed in his IEP.

One of the basic rules about special education is that your child must have access to the regular curriculum that children without disabilities are learning. So, if children in Alabama learn about Native American Indians in 4th grade Social Studies, your fourth grade student should be

learning about them, too.

### Prep Steps

1. Prioritize your concerns going into the IEP meeting. What are the two or three most important things you want to accomplish in the IEP meeting? Focus on them. You don't want to go to the meeting with no ideas about what you want to see addressed. At the same time, you don't want to go to the meeting with a long, unfocused list of concerns.
2. It's often difficult to actively participate in a meeting and take good notes. If that's true for you, consider taking a friend with you to be your note-taker. In the alternative, tape record meetings so you can refer back to the recording afterwards. Even if your child's school has a written policy against tape recording meetings, you are still entitled to do so if necessary to participate in the special education planning process.
3. Keep focused on the issues at the meeting, even if disagreements arise.
4. Check to see the IEP is filled in correctly and that it accurately represents what the IEP Team has decided. Ask for copies of documents discussed at the meeting.
5. Your signature on an IEP shows you attended the meeting, not that you are agreeing with

the content of the plan. If there are things about the IEP with which you don't agree, go ahead and sign the IEP. You can also note your disagreement on it somewhere but there is no legal requirement that you do so. In addition, request "Prior Written Notice" (sometimes called "Notice of Intent"). Whenever a school district proposes to initiate or change the identification, evaluation, or educational placement (including services) of your child, it must provide you with prior written notice of that action. The opposite is also true. Any time a district refuses to initiate or change any of these things (including in response to a request from you) it must give you written notice of its refusal. This notice must be provided to you a reasonable time before the school takes the action it's contemplating.

6. Don't let up after the IEP meeting. Review the IEP regularly to check on your child's progress on his goals and benchmarks. Note any problems you see and call for a meeting if you are concerned about a lack of progress. Check in with your student to make sure he is getting the services, aids, and accommodations agreed to in the IEP meeting.



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### **Alabama Disabilities Advocacy Program**

Box 870395

Tuscaloosa, Alabama 35487-0395

1-205-348-4928 (V/TDD)

1-205-348-3909 (Fax)

1-800-826-1675 (for clients - instate only)

e-mail: [adap@adap.ua.edu](mailto:adap@adap.ua.edu)

website: <http://www.adap.net>



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