Pennsylvania Parent Guide

To Special Education For School Age Children

pennsylvania
DEPARTMENT OF EDUCATION

Bureau of Special Education
Pennsylvania Training and Technical Assistance Network

INTRODUCTION

Parents are very important participants in the special education process.

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

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

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

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

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

At the end of this booklet is a list of resources where parents can go for help or to have their questions answered. Sample letters that parents may use as models when writing to school district officials about their child are also included.

TABLE OF CONTENTS

CHAPTER 1

Does my child need special education?. . 1

CHAPTER 2

How is my child's special education program determined?. 6

CHAPTER 3

What are the school's responsibilities to my child and me? 13

CHAPTER 4

What if I disagree with school officials about my child's education program or think my child's rights are being denied? 18

CONCLUSION 22

APPENDIX

Sample Letters 23

Resources. 28

Glossary 29

CHAPTER 1

Does My Child Need Special Education?

Determining Eligibility

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

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

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

NOTE: Children who have disabilities that substantially limit their participation in or access to school programs, but who do not need special education, may qualify for reasonable accommodations in the general classroom under Section 504 of the Rehabilitation Act of 1973 and other Pennsylvania education regulations. The rules – called Chapter 15 – that apply are different from those for students needing special education who qualify by meeting the two-part criteria listed above.

Indications of Physical, Sensory, Mental, or Emotional Disability

Some indications that your child may be a child with a disability in order to meet the first part of the two-part definition are:

- Exhibition of an emotional disturbance over a long period of time that affects your child's ability to learn,
- Consistent problems in getting along with others,
- Difficulty communicating,
- Lack of interest or ability in age-appropriate activities,
- Resistance to change,
- Difficulty seeing or hearing that interferes with the ability to communicate,
- Health problems that affect educational performance including attention problems,
- Difficulty performing tasks that require reading, writing, or mathematics.

Your child may need specially-designed instruction that other children in the general education classroom may not need to make progress in school. This need for special education is the second part of the two-part decision to qualify a child for special education services.

Screening

Your child's school has a screening process in place that identifies students who **may** need special education. This process should include:

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

You may request that the evaluation take place without going through these screening activities.

The Evaluation Process

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

problem, or an evaluation from a doctor for a child with a health concern. The evaluation must also include input from a therapist if certain related services, such as speech or occupational therapy, may be needed.

A child may be referred for the first evaluation in several ways:

- You may ask your school to evaluate your child for special education at any time. This can be done by sending a letter to the principal of your child's school or by asking a school professional employee. A "Permission to Evaluate–Evaluation Request" form will be sent to you within 10 calendar days after the receipt of your request.
- The school may also contact you and must ask permission to have your child evaluated using a "Permission to Evaluate–Consent" form. You must consent in writing to your child's evaluation. School officials cannot proceed without your written permission. If permission is not received and the school continues to find that an evaluation is necessary, they may ask for a due process hearing and get approval from an impartial hearing officer to evaluate your child. More information about due process hearings is found in Chapter 4.

The types of tests that are used in the evaluation process depend upon the educational challenges your child is experiencing. In most cases, your child may be given several tests to help find strengths and needs. Someone other than your child's general classroom teacher may also observe your child in class. Information that you share must also be included in the evaluation.

What the Evaluation Will Tell You

The evaluation will include information about your child's skills, social–emotional status, behavior strengths and needs, learning strengths, and educational needs.

All evaluations and reevaluations must include a review of the testing and assessments that were conducted, information from the parents, classroom observations, and the observations of teachers and related service personnel.

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

An evaluation team reviews all materials and writes a report called an Evaluation Report (ER) that tells if your child has one or more disabilities and if your child needs special education. It makes recommendations about the types of services your child needs. The ER may state that your child is not eligible and does not need special education services. You will receive a written notice of this determination and have the right to disagree and may request an independent educational evaluation or request a due process hearing.

The entire evaluation process must be completed within 60 calendar days (not including summer vacation) from the date you give permission by signing the "Consent to Evaluate" form given to you by your school district. A copy of the ER must be given to you and a summary of the report will be communicated to you at least 10 school days before the IEP meeting. A parent may waive this 10-day provision in writing.

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

Independent Evaluations

You may also get evaluation reports from professionals outside the school system and send them to your child's school. The results of these outside evaluations will be considered in determining if your child has a disability and needs special education. If you wish for the school district to pay for an independent educational evaluation, you must make that request in writing prior to having the evaluation conducted. The school district will provide you with information about where an independent evaluation can be obtained. If the school district refuses, they must initiate a special education due process hearing.

Allowing for Differences in English Language Skills and Ethnic Background

Evaluations and reevaluations must take into account the child's English language skills and ethnic background so that the testing and evaluation will not be unfair for a child of a different race or

culture. Tests must be given in the language or form that is most likely to give accurate information, unless it is clearly not feasible to do so. Evaluations must also take into account the child's disability to be sure the results are reliable. For example, a child with a severe visual impairment should not be given a written test with small print.

The Reevaluation Process

A reevaluation is conducted at least every three years unless your child is disabled due to mental retardation, in which case reevaluations are conducted at least every two years. A reevaluation is conducted to determine whether your child continues to be a child with a disability and needs to continue receiving special education. When additional data is needed to complete a reevaluation, the school must seek your permission to perform the additional evaluation using the "Permission to Reevaluate-Consent" form.

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

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

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

You and your school district may agree in writing that the three-year reevaluation is not necessary. If the school district proposes to waive the reevaluation, they will issue you an "Agreement to Waive Reevaluation" form. This is not an option if your child has mental retardation.

CHAPTER 2

How Is My Child's Special Education Program Determined?

Special Education

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

- At public expense (no cost to you).
- Under public supervision and direction.
- Without charge to preschool (ages 3-5), elementary, or secondary school students.
- In the Least Restrictive Environment (LRE). This means that children with disabilities are educated to the maximum extent appropriate with children who are not disabled.
- In conformity with an Individualized Education Program (IEP). This means that students with disabilities who need special education must receive a free appropriate public education (FAPE).

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

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

Your Child's Individualized Education Program (IEP)

The IEP team (made up of your child's teachers, administrators, related service providers, and **you**) writes the IEP. This plan will be written at a meeting and will include a description of all the programs and services necessary to help your child be successful. The IEP team uses information that is contained in the ER to write the IEP.

As a parent, you are an IEP team member. It is important that you attend these meetings. Meetings will be scheduled to fit in with your schedule and school officials' schedules. You will get a written notice of when, where, and why the meeting will be held and a list of the

other people who are invited to attend. The IEP meeting is to be scheduled at a time and place that is mutually agreed upon by you and your school district. If the date or time is not convenient, you may ask for a change. Parents may also be included by telephone if it is impossible for them to attend the meeting in person.

Required members of each IEP team are:

- The child's parent(s).
- At least one of your child's general education teachers (if your child attends, or might attend, general education classes).
- At least one special education teacher.
- A representative of the school district who:
  - Is qualified to provide or supervise special education programs.
  - Knows about the general curriculum.
  - Knows about the availability of the resources the local educational agency (LEA) can offer.
- Someone who can interpret the evaluation results, who may already be a member of the team.
- At your request or that of the school district, other people who know your child well or who have worked with your child. You may bring an advocate to advise you or anyone else who will be able to add information about your child's educational experience.
- Your child at age 14 when planning will be done for life after graduation, or any time before that age when you want your child to be present, and it is appropriate.
- A representative from a vocational-technical school if a vocational-technical program is being considered for your child.

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

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

IEP Timelines

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

Your child's program is reviewed every year at an IEP meeting or more often if requested by you or any other IEP team member. Whenever there are concerns about or changes to the IEP, a meeting may be requested by you or any other member of the IEP team.

IEP Contents

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

The IEP team will determine:

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

child untimed tests or having someone help the child take class notes.

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

In developing the IEP, the team must consider:

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

At each IEP meeting, the team will determine if the student is eligible for Extended School Year (ESY). If found eligible, a description of ESY services will be included in the IEP. In some cases, interruptions in the school schedule, such as summer break, will result in children with disabilities losing many of their basic skills and taking a long time to get those skills back once school begins again. ESY services are to be provided during breaks in the educational schedule to prevent this loss as part of a free appropriate public education.

Planning for Life After Graduation

As your child gets older, the IEP team will design a program to help your child prepare for life when your child is finished with school. This is called transition planning because planning is done through the IEP to facilitate the transition from school to the world of work or other activities in which the young adult may be involved. Your child will learn the skills needed in the future while he or she is still in school.

Planning for the transition from school to adult living must begin when your child turns 14, or sooner if the IEP team thinks early planning would be appropriate. The IEP team (including your child, if possible) must discuss what you and your child want your child to be doing when high school is completed. These plans must include the kind of education or training your

child will receive, the kind of job your child might have, where your child will live, and how your child will spend time in the community.

Educational Setting

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

The special education program will be completely developed before the IEP team decides where the child's program will be provided. The IEP team will consider supports and services to determine how the program can be delivered in the LRE. The first place it will consider will be the general classroom in the neighborhood school your child would attend if your child were not eligible for special education.

The Appropriate Services

The services chosen for your child will depend upon the amount and kind of special instruction or support your child needs. A special education teacher may be able to give instruction in the general classroom. This may be referred to as "co-teaching."

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

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

- Learning support – for children whose greatest need of support is in the areas of reading, writing, math, or speaking or listening related to academics.
- Emotional support – for children whose greatest need is for social, emotional, and behavioral help.
- Life skills support – for children whose greatest need is to learn academic, functional, or vocational skills that will allow them to live and work independently.

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

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

Notice of Recommended Educational Placement/Prior Written Notice

Once you have developed the IEP with the IEP team, you will receive a Notice of Recommended Educational Placement (NOREP)/Prior Written Notice (PWN). The NOREP/PWN explains the educational placement or class recommended for your child and explains your rights. You must approve the IEP and educational placement in writing for your child's first special education placement before the school is allowed to begin implementation. For subsequent IEPs, services will continue without your signature on the NOREP/PWN.

CHAPTER 3

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

Basic Rights for Parents

As a parent you have a right to be notified of the safeguards that serve to protect the rights of your child who is a child with a disability or thought to be a child with a disability. This is sometimes called procedural safeguards. The school has the duty to inform parents of these procedural safeguards once each school year.

In addition, the law requires parents to be informed:

- When the school proposes to change the identification, evaluation, educational placement, and the provision of a free appropriate public education.
- When the school refuses your request to change the identification, evaluation, educational placement, or the provision of a free appropriate public education.
- About your child's progress toward annual IEP goals on a periodic basis. This could be quarterly, such as when the report cards are issued, or more often if the IEP team determines that it is appropriate.
- Of the procedures to maintain the privacy of your child's education records. Your child's record will be seen only by those who need to work with your child. Your school district must show you its policy about student records and confidentiality if requested. Detailed information on confidentiality will be described in the notice given to you on those instances listed above.

Your Child's School Records

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

The law guarantees that your child's school records be kept confidential. No one should see them who does not have an educational interest in your child.

Someone has an educational interest in your child if that person teaches your child or otherwise is responsible for some aspect of your child's education. Records cannot be given to anyone outside the school system without your permission unless there is a legal reason for doing so. Your district must have a procedure for you to follow to correct the records that you feel are wrong or misleading.

Materials, Classrooms, and School Buildings

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

High School Graduation

All students receiving special education services in Pennsylvania are guaranteed the right to an opportunity to earn a high school diploma. A high school diploma will be awarded to a student who successfully completes the same courses and earns the same credits as a general education student, or who completes the special education program developed by the IEP team. School districts will permit students with disabilities to participate in graduation ceremonies with their graduating class, even though they will not be awarded a diploma and will continue to receive educational services.

Notwithstanding any other provision of law to the contrary, a student who attains the age of twenty-one (21) years during the school term and who has not graduated from high school may continue to attend the public schools in his/her district, free of charge, until the end of the school term. If school officials believe your child's IEP has been completed and your child is eligible for graduation, or if your child is approaching the end of the term in which your child reached the age of 21, you will receive written notice of the termination. If you disagree with the notice, you may request an informal meeting with school officials, mediation, or a special education due process hearing.

Discipline for the Student Receiving Special Education Services

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

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

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

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

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

There are special rules in Pennsylvania for excluding children receiving special education services for disciplinary reasons. Before a student is excluded from school for more than 10 school days in a row or 15 total school days in any one school year for disciplinary reasons, the IEP team must meet. A Notice of Recommended Educational Placement (NOREP)/Prior Written Notice must be signed,

because such exclusions are considered changes in placement. The exclusion of a child with mental retardation for any amount of time is considered a change in placement and requires all of the steps mentioned above. When a student is subjected to a series of removals that accumulates to more than 10 days in a year, but less than 15, these removals may be a change in placement, and if so require prior notice to the parents for approval. This determination of whether or not the series of removals is a change in placement is done on a case-by-case basis. Factors such as the length of time of each removal, the total amount of time the child is removed, and the proximity of the removals to one another are used to determine if the series of removals is a change in placement. If you do not agree with the change in placement on the NOREP, your child remains in the existing placement until due process is complete. School officials may seek a court order to exclude your child from school to "override" your disapproval.

When a child's placement is changed for disciplinary reasons, the IEP team (including the parents) must meet to review the IEP to decide if it is appropriate and if it contains an appropriate plan that addresses the child's problem behaviors. If no plan is included in the IEP, a functional behavioral assessment (FBA) must be done and a behavioral plan developed. An FBA reviews the child's behavior in the setting where the problems are occurring and analyzes what is happening to trigger and reinforce the inappropriate behaviors. The IEP team then outlines steps to take to reduce problem behaviors and replace them with appropriate ones. If a plan already exists, it must be reviewed and, if necessary, changed.

In addition, a "manifestation determination" must be conducted by the IEP team to decide if your child's behavior was caused by your child's disability or is a "manifestation" of the disability. In order to determine that a behavior was a manifestation of the disability, the team must decide that the conduct in question was caused by, or had a direct relationship to your child's disability; or the conduct in question was the direct result of failure to implement your child's IEP. Children with disabilities cannot be disciplined for behaviors that are related to or are manifestations of their disabilities.

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

services to deal with your child's problem behavior so it does not occur again.

Due Process to Challenge Disciplinary Exclusion

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

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

Anytime a child is given a disciplinary removal that is a change in placement, or anytime a placement is changed for possession of weapons or drugs or serious bodily injury, school officials must still provide a free appropriate public education, including all services identified on the child's IEP, and any others necessary for the student to reach IEP goals.

The law contains certain protections for children yet to be identified as a "child with a disability" who face disciplinary procedures. If school officials "knew or should have known" that a child has a disability, because of written requests from the parents for an evaluation or written expressions of concern to supervisory or administrative personnel, or because teachers or other school personnel have expressed concerns about the child to the special education director or other supervisory personnel about a pattern of behavior or performance, the child is entitled to the protections given to children who already have been identified as having a disability and needing special education services.

CHAPTER 4

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

The Rights of Parents

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

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

An exception to the reduction or denial of reimbursement will be made if you are unable to read or write in English, physical or serious emotional harm to the child may result if the parent adhered to the prior

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

A parent has the right to withdraw a student with a disability from special education programs and related services. A parent must do this in writing. The school district or intermediate unit must issue a NOREP before services are discontinued. The NOREP must be issued to the parent within 10 calendar days. A school district or intermediate unit may not continue to provide special education and related services or use due process to challenge a parental decision to withdraw a student from special education programs. When a child is withdrawn from special education, the school district or intermediate unit is not required to remove references to special education services from the child's records.

The Bureau of Special Education has established ConsultLine, a toll-free information line for your questions and concerns: 1-800-879-2301. ConsultLine is designed to assist parents and advocates of children with disabilities or children thought to be disabled. If you have questions concerning your child's special education program or the laws relating to the provision of services in your child's IEP, the special education specialists at ConsultLine may be able to assist you.

Mediation

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

If you and school officials agree to try mediation, the Office for Dispute Resolution will arrange for a neutral, specially-trained mediator to hold a mediation session. During mediation, the mediator will meet with both sides to hear both points of view regarding the disagreement. The mediator may meet with both sides together and separately, to better understand each position. Neither school officials nor parents may include a lawyer at a mediation session.

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

agreement is a legally binding document and is enforceable in a court.

You may discuss mediation with your school administrator or you may call the Office for Dispute Resolution at 1-800-222-3353. Both the procedural safeguards notice and the Office for Dispute Resolution website (odr.pattan.net) contain a form for this purpose.

The Special Education Hearing

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

- The name and address of the child and the name of the school the child attends.
- A description of the problem.
- A proposed solution to the problem. The commonwealth has developed a form for school districts to provide to parents for this purpose. This form is called a Due Process Complaint Notice. It is available through your school district's administrative office, the Office for Dispute Resolution website (odr.pattan.net), and your procedural safeguards notice.

Within 15 days of receiving notice of your complaint and before a hearing is held, the school district must hold a resolution session for you and school officials to provide an opportunity to resolve your complaint, unless both you and the school agree in writing to waive this meeting or agree to use mediation.

If your complaint has not been resolved to your satisfaction within 30 days of the school receiving the due process complaint notice, a hearing may occur before an impartial hearing officer. The hearing officer cannot work for the school district or local intermediate unit. You may be represented by legal counsel or you may represent yourself. You may also be accompanied and advised by any individuals whom you believe would be knowledgeable or helpful to you during the hearing.

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

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

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

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

Except in limited circumstances (see page 17 "Due Process to Challenge Disciplinary Exclusion"), when a parent requests a due process hearing, the child must remain in the child's current educational placement unless the parent and school district agree otherwise. This is called the "stay put" rule. If the parent's request is made at a time when there is a dispute in regard to initial admission to public schools, the child must be placed in the public school, with the parent's consent, until due process is complete.

If you prevail in a due process hearing, it can be decided by the courts that your attorney's fees will be paid by the school district. Parents may be ordered to pay the district's costs if it is found they pursued a complaint to harass, cause unnecessary delay, or needlessly increase costs to the district.

The Court Process

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

CONCLUSION

The concept of special education is simple. If a child has unique needs that require special education as a result of a disability, those needs are to be determined and a program to meet those needs must be designed and carried out. However, the procedures and processes involved in designing this special program and carrying it out are complex and may seem cumbersome.

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

Sample Letters

The following sample letters may give parents ideas about how to compose letters requesting evaluations, reevaluations, due process hearings, or reimbursement for independent evaluations. Parents should always keep the welfare of their child in clear focus whenever they communicate with school district officials.

Requesting Evaluation

Your address
Your phone number at home
Your phone number at work
Date

Principal's name
School name
School address

Dear principal's name:

I am the parent of your child's full name whose date of birth is month/day/year. Your child's first name is in the number grade in room number. My child is not doing well in school, and I am requesting that an evaluation be carried out to determine what the problems are and how they can be addressed. I understand that I am a member of my child's evaluation team and I wish to give input to the team. Please let me know how I can participate in this process.

I look forward to the school district providing me with a notice of my parental rights and a "Consent to Evaluate" form for me to sign. I understand that the evaluation must be completed and a report issued within 60 calendar days after the school district receives my signed "Consent to Evaluate" form.

Please contact me if you require any further information.

Thank you.

Sincerely,

Your name

Requesting Reevaluation

Your address
Your phone number at home
Your phone number at work
Date

Principal's name
School name
School address

Dear principal's name:

I am the parent of your child's full name whose date of birth is month/day/year. Your child's first name is in the number grade in room number. My child is not doing well in school. I am particularly concerned about: list specific worries you may have about your child's progress, IEP goals, behavior, and so forth.

In order to better find out what changes may need to be made in my child's special education program or services, I am requesting that a reevaluation be carried out. I understand that I am a member of my child's evaluation team, which conducts the reevaluation, and I wish to give input to the team. Please let me know how I can participate in this process.

Please send me the "Permission to Reevaluate - Consent" form. Please contact me as soon as possible to let me know when the reevaluation will take place.

Thank you.

Sincerely,

Your name

Requesting Reimbursement for an Independent Evaluation

Your address
Your phone number at home
Your phone number at work
Date

Principal's name
School name
School address

Dear principal's name:

I am the parent of your child's full name whose date of birth is month/day/year. Your child's first name is in the number grade in room number.

I am requesting that the school district agree to pay for an independent evaluation of my child. I believe that this evaluation is necessary because the district's evaluation did not list reasons why you believe the district's evaluation was not sufficient or appropriate to be used to develop an appropriate program for your child.

I understand that if the school district turns down my request, it must arrange for a special education hearing. Please contact me to let me know whether the independent evaluation will be provided or when the hearing will be scheduled.

Thank you.

Sincerely,

Your name

Requesting a Due Process Hearing

The following form must be filled out to request a due process hearing.

"Due Process Hearing Request: Request for a Due Process Hearing" must be forwarded to the Office for Dispute Resolution immediately after receipt of the request from the parents. It is important that both sides of this form be fully completed. Maintain a copy of this form for your records.

Student's Name: _____

Date of Birth: _____

Student's Exceptionality: _____

School District: _____

School District Contact Person: _____

_____

Title: _____

Address: _____

Phone: _____

Email/Fax: _____

School District Attorney/Representative: _____

_____

Title: _____

Address: _____

Phone: _____

Email/Fax: _____

Parent(s): _____

Address: _____

Phone: _____

Mother (work) _____

Father (work) _____

Email/Fax: (if available) _____

Parents' Attorney/Representative: _____

_____

Title: _____

Address: _____

Phone: _____

Email/Fax: _____

Information About This Hearing

The following information is needed to facilitate the scheduling of the hearing:

Parent Position: _____

_____

_____

_____

Parent Resolution: _____

_____

_____

_____

School District Position: _____

_____

_____

_____

School District Resolution: _____

_____

_____

_____

The hearing will be held at a time and place reasonably convenient for the parents.

Is a language other than English the dominant language of the parents? *Yes* _____ *No* _____

If yes, identify language: _____

The school district must provide a convenient location for the hearing. Please consider the needs of all individuals involved in the hearing, including accessibility for individuals with disabilities. This hearing will be held at the following address:

_____

_____

_____

(Please enclose a map and/or directions for the Hearing Officer.)

Date form completed: _____

Send this form to:

Office for Dispute Resolution
6340 Flank Drive
Harrisburg, PA 17112

Resources

Statewide Organizations

Bureau of Special Education ConsultLine
800-879-2301

The Arc of Pennsylvania
(Advocacy & Resources for Citizens With Cognitive, Intellectual, and Developmental Disabilities)
800-692-7258
www.thearcpa.org

Disability Rights Network of PA (DRN)
800-692-7443 (Toll-Free Voice)
www.drnpa.org

Education Law Center
215-238-6970
www.elc-pa.org

Pennsylvania State Task Force on the Right to Education
800-446-5607 x6828
http://parent.pattan.net/statetaskforce
(Each intermediate unit has a local task force)

Pennsylvania Training and Technical Assistance Network (PaTTAN)
800-441-3215 (King of Prussia)
800-360-7282 (Harrisburg)
800-446-5607 (Pittsburgh)
www.pattan.net

Parent to Parent of Pennsylvania
888-727-2706
www.parenttoparent.org

Regional Advocacy Organizations

Eastern and South Central Pennsylvania:

Parent Education Network (PEN)
717-600-0100 (V/TTY) 800-522-5827 (V/TTY)
www.parentednet.org
800-441-5028 (Spanish in PA)

Central and Western Pennsylvania:

Parent Education and Advocacy Leadership (PEAL) Center
412-281-4404 (Voice) 866-950-1040 (Voice)
www.pealcenter.org

Philadelphia, Pennsylvania:

Hispanics United for Exceptional Children (HUNE, Inc.)
215-425-6203 (Voice) 215-425-5112 (Helpline)
www.huneinc.org

Northwestern Pennsylvania:

The Mentor Parent Program
814-297-5149 (Voice) 888-447-1431 (Voice in PA)
www.mentorparent.org
800-855-1155 (TTY)

Glossary of Special Education Terms

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

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

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

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

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

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

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

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

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

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

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

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

Notice of Recommended Educational Placement (NOREP)/Prior Written Notice (PWN): The form issued to parents to inform them of the placement recommended by the IEP team.

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

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

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

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

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

COMMONWEALTH OF PENNSYLVANIA

Tom Corbett
Governor

DEPARTMENT OF EDUCATION

Ronald J. Tomalis
Secretary

Carolyn C. Dumaresq, Ed.D.
Deputy Secretary
Office of Elementary and Secondary Education

John J. Tommasini
Director
Bureau of Special Education

Patricia Hozella
Assistant Director
Bureau of Special Education

pennsylvania
DEPARTMENT OF EDUCATION
Bureau of Special Education
Pennsylvania Training and Technical Assistance Network

2/11