



## **OFFICE OF THE JUDGE ADVOCATE GENERAL** **LEGAL ASSISTANCE POLICY DIVISION**



### **SPECIAL EDUCATION**

Special education is instruction that is specially designed to meet the unique needs of a child with a disability. Schools have an obligation to find and evaluate children thought to have disabilities at no cost to the parents. Special education and related services are then provided by public schools, at no cost to the parents.

The definition of special education comes from the Individuals with Disabilities Education Act (IDEA), which governs the provision of special education and related services for children with disabilities. Infants and toddlers from 0 to 3 could qualify for early intervention services. Children from 3 to 21 may be eligible for preschool and school age assistance through an Individualized Education Plan or IEP. The goal of IDEA is to help public schools prepare disabled children for further education, employment and independent living.

**Eligibility.** Children with disabilities are eligible for special education and related services after they are 1) evaluated; 2) the child meets the criteria of one of the 13 disability categories; 3) the disability has a negative impact on educational performance; and 4) and the child needs specialized instruction and related services. The IDEA's created 13 different disability categories under which a child may be found eligible for special education and related services:

1. Autism
2. Deafness
3. Deaf-blindness
4. Hearing impairment
5. Intellectual Disability
6. Multiple disabilities
7. Orthopedic impairment
8. Other health impairment
9. Serious emotional disturbance
10. Specific learning disability
11. Speech or language impairment
12. Traumatic brain injury
13. Visual impairment, including blindness.

**Determination of Eligibility.** The school must perform an evaluation according to IDEA procedures before a child is eligible for special education. You can ask the school to *evaluate* your child. E-mail or ask school staff in writing to evaluate your child. Describe your concerns with your child's educational performance and request an evaluation under the IDEA, to see if a disability is involved. Be sure to specific under the IDEA. The school does not *have* to evaluate your child just because you have asked, however the school must tell you why they are not evaluating your child and provide the reason in writing Alternatively, the public school may also be concerned

about how your child is learning and developing. If the school thinks that your child may have a disability, then it *must evaluate your child. The evaluation is at no cost to you.*

The school must ask your permission and receive your written permission before it may evaluate your child. The evaluation process is:

1. Parent, teacher, or other knowledgeable person refers student who is suspected of having a disability and needing special education to school officials.
2. School officials notify student's parents or caregivers that the student has been referred for evaluation and meet with parents to discuss the tests needed for evaluation or the school official provide their reasons not to evaluate the student in writing.
3. If agreement to evaluate, school officials will request informed parental consent to evaluate the student.
4. Within 60 days of obtaining parental consent, a multidisciplinary team will complete an evaluation of student addressing all areas of suspected disability.
5. School officials meet with parent/caregiver to discuss the results of the evaluation and determine whether special education services are needed by the student.
6. If special education and related services are needed, then the school in conjunction with parents must develop an IEP.
7. The educators may draft and present the IEP to the student's parents/caregivers. The parents may accept, reject, negotiate an alternative IEP, or delay making a decision regarding the IEP and seek an independent evaluation.
8. The parent must then provide written permission for the school to provide the special education and related services in the IEP. After consent is provided the IEP may be implemented.
9. School officials ensure that the IEP is reviewed annually, and the student is re-evaluated at least once every three years.

**Required Elements of an IEP:** After a child has been found eligible for special education services, the next step is to write and implement an IEP. The IEP is the cornerstone of your child's education. It describes in detail the services and support the child is to receive. A free and appropriate public education (FAPE) mandates that schools provide an IEP that is in alignment with the processes and procedures established in the IDEA. An IEP must include the following:

1. A statement of the Child's present level of academic achievement and functional performance;
2. Measurable, annual academic and functional goals for the child;
3. Description of how school officials will measure the child's progress towards meeting annual goals, and when periodic reports will be provided;
4. A statement of the special education and related services or aids that the child will receive, and the frequency, location and duration of the services and supports for the child;
5. A statement of program modification or support for school personnel to assist the child in attaining their annual goals; to be involved in and make progress towards general education, to participate in extracurricular and other nonacademic activities and to be educated with non-disabled peers;
6. Description of how school officials will measure the child's progress towards meeting annual goals, and when periodic reports will be provided;
7. Statement of special education and related services and/or aids the child will receive;

8. Explanation of the extent to which the child will participate in general education classes with non-disabled peers vs. special education with children with disabilities.

**IEP team: The IEP team must include:**

- 1) The parent/caregiver of the child;
- 2) At least one regular education teacher;
- 3) At least one special education teacher;
- 4) A school district representative who is qualified to provide or supervise special education, is knowledgeable about regular education and is knowledgeable about the district resources;
- 5) An individual who can interpret evaluations; and
- 6) At the discretion of the parent of school, other individuals who have knowledge or special expertise of the child, including related service providers; and
- 7) The child when appropriate special education

The parent has the ability to excuse a team member, but this is not ideal as you don't know what conversation may not occur if an important team member is not participating. Additionally, parents are equal members of the team and must be afforded the opportunity not just to speak, but to meaningfully participate as a team member.

For more information on special education advocacy, please contact your local legal assistance office to speak with an attorney.

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