

**THE RIGHT TO SPECIAL EDUCATION
IN PENNSYLVANIA:**

A GUIDE FOR PARENTS AND ADVOCATES

**THE EDUCATION LAW CENTER - PA
2009 Edition**

Key Timelines in the School-Age Special Education System

60 Calendar Days (minus summers) to Evaluate: A school district has **60 calendar days** (excluding the summer months) from the date a child's parent signs a Permission to Evaluate (PTE)-Consent Form to evaluate the child and issue an Evaluation Report (ER). If a parent writes a letter to the school requesting an evaluation, the school must then make the Permission to Evaluate-Consent Form "readily available." If the parent orally requests an evaluation, the school must provide the parent with a form to put her request in writing within **10 calendar days** of the oral request.

Evaluation Report Given to Parents 10 School Days Before IEP Team Meeting: The school district must provide the parents with a copy of the Evaluation Report at least **10 school days** before the Team meets to develop the child's special education program. Parents can waive this requirement in writing.

IEP Team Meets Within 30 Calendar Days: If the child is found to be eligible for special education services, a Team (which includes, at minimum, the child's parents, a special education teacher, an administrator, and, in most cases, a regular education teacher) must meet to develop the child's Individualized Education Program (IEP) within **30 calendar days**. The IEP is the written document that is the "contract" between the parents and the school. It lists the child's goals and the services the school will provide to the child to help meet those goals.

School Implements IEP Within 10 School Days: After the IEP Team meets and develops the IEP, the school must start to provide all the services included in the IEP no later than **10 school days** after its completion.

IEP Must Be In Effect at Beginning of Each School Year: The school must make sure that every child who gets special education services has an IEP in place at the beginning of each school year.

Extended School Year Determination Made by February 28th for Children with Severe Disabilities: The IEP Team must meet by **February 28th** of each school year to determine a child's need for Extended School Year (ESY) services over the summer months or at other times when school would not usually be in session for children with severe disabilities (such as children with autism, serious emotional disturbance, severe mental retardation, and severe multiple disabilities). For children with less severe disabilities, the IEP Team must make a determination about a child's eligibility for ESY services each year in a "timely manner."

IEP Must Be Reviewed at Least Once a Year: The child's IEP Team must review the IEP at least annually. The IEP can be reviewed more often than once a year, and any IEP Team member (which includes the parents) can request a meeting at any time.

Reevaluation Occurs At Least Every Three Years (Two Years for Children with Mental Retardation): Children who are eligible for special education services must be reevaluated at least **once every three (3) years**, or sooner if necessary. Parents can be asked to waive the three-year reevaluation, but parents should think very carefully before doing so. **Children with mental retardation must** be reevaluated at least **once every two (2) years**.

THE RIGHT TO SPECIAL EDUCATION IN PENNSYLVANIA: A GUIDE FOR PARENTS AND ADVOCATES

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INTRODUCTION

PURPOSE OF THIS GUIDE

Children with disabilities can do great things in school and in life when they get the right supports and services. This Guide is meant to help you - the parent - learn how the system designed to educate children with disabilities (called special education) works in Pennsylvania and how you can make it work for your child. No one knows your child like you do. The law makes it clear that your knowledge of your child and your opinions about your child's educational needs are important and must be considered by school officials.

Special education is an educational program designed to meet the particular needs of a child with a disability at no cost to the parents. State and federal laws provide special protections for children with disabilities in public school and require that certain services and supports be available to help your child succeed in school.

WHAT THIS GUIDE COVERS

This Guide describes the legal rules for special education and early intervention programs in Pennsylvania **for children from ages three until 21**. (ELC has a separate manual called *The Right to Early Intervention for Infants and Toddlers and Their Families in Pennsylvania: A Handbook for Parents* that sets out the rules for children with disabilities under age three. This Guide can be downloaded for free at www.elc-pa.org.) This edition of this Guide incorporates changes made to Pennsylvania's special education regulations on July 1, 2008 as well as changes made to the federal special education law (called the **Individuals with Disabilities Education Act** or **IDEA**) in 2004 and 2006. The Appendix to this Guide provides references to all the relevant laws that apply to children with disabilities in public school (see "Legal References" in Appendix 9 of this Guide).

The rules discussed in this Guide apply to children who attend **public schools in Pennsylvania**, including **charter schools**. As public schools, charter schools must evaluate and provide services to eligible children with disabilities just like any other public school. ELC has several publications about the rights of children who attend charter schools on its website.

This *Guide* *does not* address the rights of children with disabilities who attend private schools and who have been placed in those schools by their parents. (However, all the information in this *Guide* applies to children with disabilities who have been placed in a private school by a public school. For more information about placement options, see Chapter 7 of this *Guide*.) Please see our fact sheet entitled *Getting Help for Children with Disabilities in Private Schools* at www.elc-pa.org for guidance about getting support for children with disabilities in private schools.

The authors have made every effort to describe accurately the legal requirements for educating children with disabilities. However, each child's situation is different, and you may still have questions about how the law applies to your child even after you read this *Guide*. If so, contact the **Disability Rights Network of Pennsylvania** at 800-692-7443 for advice. You can also contact an attorney of your choice by calling the Pennsylvania Bar Association Lawyer Referral Service at 800-692-7375.

Special education rules can be confusing and overwhelming. **Please know that you are not alone!** There are several statewide and regional organizations that can provide you with support and advice. Many of these organizations also provide free trainings. *These advocacy and support groups are listed in the Appendix at the end of this Guide.* ELC also has many other publications on the legal rights of public school students. Check out our website at www.elc-pa.org.

GETTING STARTED: BASIC ADVOCACY TIPS

- Always keep copies of any letters, reports, or other materials you get from or give to school officials. *Get organized!* Get a three-ring binder and keep all your papers in one place.
- Make notes of any conversations you have with school officials, including the date the conversation took place and the person's name and position.
- Consider taking a friend, neighbor, or advocate with you to meetings at your child's school. Try not to go alone.
- Before you go to a school meeting, prepare for it. Write up a list of issues you want to talk about at the meeting and figure out what type of resolution you would accept.
- When you attend school meetings, ask each person at the meeting to tell you their name and position - and keep a record of that information.

- If you ask for something and are told "we don't do that" or "we can't do that," ask the school officials for a copy of the written policy, law, or regulation on which they are relying.
- Always be polite and respectful, but make sure to ask questions if you don't understand something!
- Take a look at the **Pennsylvania Department of Education's (PDE) annotated special education forms**. Each "annotated" form explains what should be included in the form and why. You can find the forms at: <http://www.pattan.net/regsforms/annotatedformsandformats.aspx>. In particular, the **annotated IEP** provides a lot of useful information.
- If you need an interpreter at the IEP Team meeting because you don't speak English well or because you are deaf, or you need the school district to send you important notices in another language or in Braille, tell that to the school district.
- Don't sign anything that you don't understand. You can always take papers home to read before you sign them.
- Follow up with school officials. If a school official has agreed to do something, make sure it gets done. **Be persistent and hang in there!**

CHAPTER 1

OTHER WAYS TO GET A CHILD HELP IN SCHOOL BESIDES SPECIAL EDUCATION

THE SCREENING PROCESS AND EARLY INTERVENING SERVICES

Some children who struggle academically or behaviorally in school may just need a little extra help to address their difficulties - they might not have a disability and require (or be eligible for) special education services. Every school district in Pennsylvania must have a "screening process" in place for providing extra help to a child and for deciding if the child should be evaluated for special education. Many school districts have used the "Instructional Support Team" (IST) process to provide such support. (In Philadelphia, this process is called the Comprehensive Student Assistance Process, or CSAP.) Schools should tell a parent that the child will be going through the screening process, and parents can also ask a school administrator about having their child screened.

TIP: If you are sure that your child has a disability and needs special education, you do not have to participate in the screening process or wait for the screening process to end to ask for an evaluation. You can request an evaluation **at any time** and it must be finished within **60 calendar days** (minus the summer months).

Some school districts may also be using "**early intervening services**" (EIS) to provide assistance to children in regular education who need help with academic learning or behaviors in school either as part of a screening process or in addition to it. Schools can use up to 15% of the federal special education money they receive to provide early intervening services. Although these funds can be used for children of any age, federal law suggests that priority be given to children in the early grades.

Early intervening services can include:

- Professional development for teachers and other school staff to allow them to deliver scientifically based academic instruction and behavioral interventions, including scientifically-based literacy instruction; and
- Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

To say that an instructional program or practice is grounded in **scientifically-based research** means there is **reliable evidence** that the program or practice works. Some common types of early intervening services include a "Response to Intervention" (RTI) model for addressing academic difficulties, and a "Positive Behavior Support" (PBS) approach for addressing behavioral problems. For more information about RtI and PBS, go to www.pattan.net and search for "RtI" and "PBS" in the search box at the top of the home page. For more information about academic and behavior programs that research has shown to improve student performance, check out the "What Works Clearinghouse" at: <http://ies.ed.gov/ncee/wwc/>.

OTHER WAYS TO GET YOUR CHILD HELP IN SCHOOL

In addition, many schools provide other supports which may address your child's needs without having to go down the special education route. Here are some examples:

Academic Services and NCLB Requirements

Some children may get help through the federal No Child Left Behind Act (NCLB). If their school has failed to make Adequate Yearly Progress (AYP) for more than two years in a row, these children can get free tutoring (called Supplemental Educational Services or SES). These children may also be able to transfer to a better performing school within their district. In addition, under NCLB, a child can transfer to a safer public school if her school is "persistently dangerous" or if she is the victim of a violent criminal offense at the school. For more information, see ELC's fact sheet entitled *How Can You Use NCLB to Help Your Own Children Do Better in School?* at www.elc-pa.org.

Student Services

Pennsylvania law requires every school district (and charter school) to

develop and promote a comprehensive and integrated district-wide Student Services Plan for grades K-12 (or starting at Pre-Kindergarten if the district offers it) based on the needs of its students. In its Student Services Plan, each district must provide services in **each one** of the following categories: 1) developmental services for students (such as guidance counseling and psychological services); 2) diagnostic, evaluation, and referral services for students who are having problems achieving educationally despite their learning potential (such as crisis intervention, evaluation for special education, or psychological counseling); and 3) consultation and coordination services for students who are experiencing chronic problems that require multiple services by teams or specialists (such as referral to community agencies or case management). Student services must be part of the instructional program at all levels of the school system - including high school.

If your child is struggling in school, you should ask the district what services are available under the district's Student Services Plan. You can also ask the district for a copy of its Plan. More information about Student Services Plans (also called Chapter 12 Student Services Plans after the chapter in the Pennsylvania regulations that sets out the requirements for such a plan), see the Pennsylvania Department of Education's (PDE) website at: http://www.education.state.pa.us/portal/server.pt/community/student_services_programs/7482, click on Chapter 12: Students and Student Services.

Services Provided Under the Accountability to Commonwealth Taxpayers (ACT) Plan

In July, 2008, Pennsylvania's General Assembly dramatically altered the way public schools are funded in Pennsylvania. As a result, many school districts received significant increases in state funding. However, the districts that received the largest increases also had to develop Accountability to Commonwealth Taxpayers Plans, or ACT or PACT Plans. In these Plans, school districts explain how they will use the increased funding. Some examples of things the funds can be used for are: 1) Increasing student instructional time - tutoring, extended school day or year, and intensive student support for English language learners; 2) New curricula or course offerings aimed at increasing the graduation rate; 3) Teacher training aimed at increasing the graduation rate and lowering the dropout rate; and 4) Reducing class size.

If your child is struggling academically, you should check to see if your school district submitted an ACT Plan to PDE. You should ask the district for a copy of that plan to see if there are any services or programs that might help your child. For more information about ACT Plans, see ELC's website at www.elc-pa.org (search for "ACT Plans" using the website's search engine).

TIP: Ask your school district or charter school what help it may have to offer your child - if there is tutoring, counseling, or some other support services available at school to meet your child's needs. **Keep in mind, however, that the only services to which a child has a right (if the child is eligible) are special education services.** All the other services listed above are not "entitlement" programs - meaning the school could decide not to offer them to a particular child even though that child might benefit from them. If your child is struggling in school, you always have the right to ask for a special education evaluation. See Chapter 3 for more details about the evaluation process.

CHAPTER 2

THE RIGHT TO A FREE APROPRIATE PUBLIC EDUCATION: AN OVERVIEW

The law guarantees every eligible child with a disability the right to a **free appropriate public education** (FAPE). Parents play a key role in ensuring that an eligible child receives an appropriate program of special education services and supports. Parents' rights in the special education system are discussed throughout this *Guide*. Some of the **most important rights** are:

- To be a member of the Team that develops your child's education program (called an Individualized Education Program or IEP), and to attend meetings about that program.
- To get written notice (called a Notice of Recommended Educational Placement/Prior Written Notice or NOREP/PWN) when the school decides if your child is eligible for special education, and before your school district changes your child's program or refuses to change your child's program. (See Chapter 9 of this *Guide*.)
- To understand every document you sign.
- To disagree with what your school district wants to do (or refuses to do) for your child's special education program and to pursue other options. (See Chapter 12 of this *Guide*.)
- To know and understand your rights in the language you understand the best.
- To see copies of all of your child's education records.

WHO IS A "PARENT" UNDER SPECIAL EDUCATION LAW?

For the rights provided in special education law to work effectively, every child with a disability (or who is thought to have a disability) must have a "parent" who can act on her behalf. The law includes several categories of persons in the definition of "parent":

- A birth or adoptive parent,
- The foster parent,

- A "guardian" who has the authority to act as the child's parent or who has the authority to make education decisions for the child,
- A family member with whom the child lives who is caring for the child (such as a grandparent or stepparent) even if that family member does not have legal custody from a court order, or someone who is legally responsible for the child's welfare, or
- A "Surrogate Parent."

If a person does not fall into one of these categories, that person cannot make special education decisions for the child. **A child's caseworker can never be the education decisionmaker for a child.** See ELC's publication called *Who Can Make Special Education Decisions for a Child with a Disability in Out-of-Home Care in Pennsylvania?* at www.elc-pa.org for more information about who can be a "parent."

WHAT IS "SPECIAL EDUCATION"?

Special education is defined as "specially designed instruction" (SDI) and the "related services" needed by the child to benefit from that instruction. "Specially designed instruction" means that teachers must adapt the content (what is taught), methodology (the process used to teach), or delivery of the curriculum to take account of your child's learning needs and to ensure that your child has access to the general curriculum provided to children without disabilities. See Chapter 5 of this Guide.

WHAT DOES IT MEAN FOR THE PROGRAM TO BE "FREE?"

All special education programs and related services needed for an eligible child to receive an appropriate program must be provided free of charge to the family. School officials *may not* ask a family to use their private insurance to pay for an evaluation or service if there is any cost involved, such as an increase in a premium or decrease in annual or lifetime coverage.

School officials may, with the parent's agreement, use a child's Medical Assistance card to pay for services that also qualify under the Medical Assistance program. These services could include, for example, speech or physical therapy. Medical Assistance may also pay for another agency to provide certain medically necessary services or equipment to children in school, such as the assistance of a

registered nurse for a medically involved child, or the help of therapeutic support staff for a child who has significant behavioral health needs. Regardless of what agency ultimately provides or pays for the services, the school district must list the services on the child's IEP and must make sure that any services needed by the child for an appropriate program are provided without cost.

WHAT MAKES A PROGRAM "APPROPRIATE?"

The special education services provided to each eligible child must be "appropriate" for that child. To be appropriate, the services must be developed according to the procedures discussed in this Guide. In addition, the special education program and services must give the child an opportunity to make **meaningful progress** toward her IEP goals, and take account of the child's potential for learning. How much progress is "meaningful" for each child depends on the individual child's potential. Merely because the child is passing from grade to grade does not guarantee that the program is appropriate for the child.

Special education law requires schools to report to parents on a regular basis the progress the child is making toward the goals in her IEP. Progress reporting must be done at least at the same time as report cards are issued to all children, or through other periodic reports. If you are not getting regular progress reports from your child's school, ASK the school to give them to you.

WHO IS RESPONSIBLE FOR MAKING SURE AN ELIGIBLE CHILD RECEIVES AN APPROPRIATE PROGRAM?

The school district where the parents live is responsible for making sure that each eligible child is located, evaluated, and provided with a free appropriate public education. Children who live in foster care, group homes, residential treatment or other child care facilities are entitled to receive their education from the school district in which the facility is located.

A FREE APPROPRIATE PUBLIC EDUCATION

A free appropriate public education is a planned program of education and special services that takes account of the child's individual needs. An appropriate program allows the child to make meaningful progress and to prepare for employment and independent living. Each child's program must be provided without cost to the family.

CHAPTER 3

GETTING A SPECIAL EDUCATION EVALUATION FOR YOUR CHILD

Figuring out if a child needs special education services starts with an "initial" evaluation. No child can get special education services until the school has completed this evaluation. The evaluation should determine if the child has a disability and needs special education as a result. The evaluation should also make recommendations about what special education and related services the child needs.

HOW DOES THE INITIAL EVALUATION PROCESS GET STARTED?

If school officials want to evaluate your child for the first time, they must send you a **Permission to Evaluate (PTE)-Consent Form**. (A copy of this form can be found at: <http://www.pattan.net/files/Forms/English/PER-070108.doc>.) The form should explain: 1) the reasons for the evaluation, 2) when the evaluation will be done, 3) any records or reports the school will use, and 4) the specific types of tests that the school district will do.

You can also begin the process yourself. If you think your child should be tested, send a letter to the school asking the school to evaluate your child. Make sure to keep a copy of the letter for yourself! A *Sample Letter Requesting an Initial Special Education Evaluation* is provided in Appendix 2 of this Guide.

The school should then give you a **Permission to Evaluate (PTE)-Consent Form** to sign. The school must make this form "readily available" to you after you submit your letter. The Pennsylvania Department of Education (PDE) has said that the "best practice" would be for the school to give you the form within **10 school days** of your request, so check with the school district if you have not gotten the form by then. **You must sign this form so the school can begin the evaluation.**

You don't have to write a letter to get the ball rolling. You can also *ask* the school principal for an evaluation to be done. The school must then give you a **Permission to Evaluate (PTE)-Evaluation Request Form** within **10 calendar days** of your request. You should then fill out this form so that you can get the

Permission to Evaluate (PTE)-Consent Form from the school. However, it is better to put your request in writing from the start - that way you will have a record of your request.

When the parent signs the Permission to Evaluate-Consent Form for an initial evaluation, she is given a **Procedural Safeguards Notice** that explains the family's rights. PDE's sample Procedural Safeguards Notice can be found at: <http://www.pattan.net/files/Forms/English/NOREP-111209.pdf>.

DOES MY SCHOOL DISTRICT HAVE A DUTY TO FIND OUT IF MY CHILD HAS A DISABILITY EVEN IF I HAVEN'T ASKED FOR AN EVALUATION?

Yes. This duty is called a school's "**child find**" duty. Each school district and charter school must have a way of telling the public that children with disabilities who live in the district, and who need special help to learn, have certain rights. Each school district must have a way of **finding and screening children** (including children who are migrants, who are homeless, who are in the custody of the child welfare system, or who attend private schools) to decide whether they need a special education evaluation even if their parents have not asked for help.

One way to screen children is called the **Instructional Support Team (IST)** process. Some school districts use a process called **Response to Intervention (RtI)**. More information about RtI can be found at www.pattan.net (click on "Response to Instruction and Intervention" under "Evidence-Based Practices"). A child can be screened because of a vision or hearing problem or to find out if she is performing at grade level in core academic subjects.

TIP: You do not have to wait until the screening process has been completed to ask for a special education evaluation. You can ask for a special education evaluation at any time, and the school must follow the process and timelines described here.

CAN THE SCHOOL REFUSE TO EVALUATE MY CHILD?

Yes. School personnel can decide that an evaluation is not necessary. However, the school must then give you written notice (called a Notice of Recommended Educational Placement/Prior Written Notice) explaining its decision not to test your child. You then have the right to disagree with this decision. You

can ask for mediation or a special education hearing to try to get an evaluation for your child. See Chapter 12 of this *Guide* for more information about dispute resolution options.

CAN THE SCHOOL PUT MY CHILD ON A "WAITING LIST" FOR AN EVALUATION?

No. If you ask for an evaluation, the school has two choices. It must either give you a consent form to sign, or it must give you written notice explaining why it believes an evaluation is not necessary. If the school agrees that your child should be tested, the school cannot put your child on a "waiting list" - the school must give you the Permission to Evaluate-Consent Form to sign. The school must then finish the evaluation in **60 calendar days** (minus the summer months). If the school tells you there is a waiting list, you can file a complaint with the Pennsylvania Department of Education's Bureau of Special Education about this issue. For a complaint form, go to:

http://odr.pattan.net/files/odr/complaint_form_111606_eng.pdf.

MUST A PARENT PAY FOR THE EVALUATION?

All evaluations must be **free** to the family. A parent cannot be charged for any part of an evaluation. For instance, if a child needs an eye exam as part of the evaluation process to rule out vision problems, the school must pay for that exam.

WHAT IF I DO NOT WANT THE SCHOOL TO EVALUATE MY CHILD?

Not every effort a school makes to figure out how well a child is doing, or how to improve instruction, is a special education evaluation. A school can review existing information on a child or give the child the same test that is given to all other children without getting your permission.

An example of a test that can be given without a parent's agreement (unless a parent objects for religious reasons) is the Pennsylvania System of Student Assessment (PSSA). Schools give the PSSA to children in certain grades to see how well they are doing in reading, math, and/or writing. It is also not a special education evaluation when a teacher or specialist "screens" a child to determine how best to teach her, so a parent's agreement is not required in this situation either.

However, if the school wants to evaluate your child to determine if she has a disability and needs special education, you must first give your written permission. **If you do not sign the Permission to Evaluate-Consent Form, the school cannot evaluate your child.** The school can ask a Special Education Hearing Officer to order that the child be evaluated. In certain situations, a family court judge can give someone other than the birth or adoptive parent the right to agree to an initial evaluation IF the child is in the custody of the Children and Youth system. But, in most cases, the parent must consent in writing to the child's evaluation before the evaluation can take place.

TIP: Remember, agreeing that your child can be evaluated is not the same thing as agreeing that she can start getting special education services. Before your child can start to get special education services, an education plan (called an IEP) must be developed, and you must be asked to sign a separate form agreeing that your child can begin to receive special education services. **If you decide that you do not want your child to receive special services, the school cannot give your child those services and the school cannot overturn your decision through the special education hearing process.**

WHEN MUST MY CHILD'S SCHOOL FINISH THE INITIAL EVALUATION?

A school district or charter school must evaluate your child and give you a copy of the "Evaluation Report" (ER) within **60 calendar days** (minus the summer months) from the date you signed the PTE-Consent Form (unless you keep missing appointments for your child's evaluation). For children ages three (3) to school-age, the preschool early intervention agency has **60 calendar days** (*including the summer months*) to complete the evaluation process. See Chapter 13 of this Guide for more information about timelines that apply in the preschool early intervention system.

TIP: Remember - the timeline for completing the initial evaluation does not start *until* you have signed the Permission to Evaluate-Consent Form. Don't let the school take more than **10 days** to give you this form. *Keep a copy of whatever you sign or send.*

WHAT HAPPENS IF THE CHILD MOVES TO ANOTHER SCHOOL DISTRICT BEFORE THE INITIAL EVALUATION IS DONE?

The school may have longer than **60 calendar days** (excluding the summer months) to finish the evaluation if the child moves into a new school district before the initial evaluation is done. The evaluation can take longer *only if* you and the school agree to a *specific time* when the evaluation will be done and the new school district is making enough progress to complete the evaluation quickly. The new and old schools must coordinate the testing to evaluate the child as soon as possible. The new school must promptly request the child's school records, and the old school must send the records within **10 business days**.

WHO EVALUATES MY CHILD AND WHAT TYPES OF TESTS SHOULD BE DONE?

A team of "**qualified**" professionals designs the evaluation. The **parent** is a member of this team. In most cases, a "**certified school psychologist**" must be included as a member of the evaluation team. (For preschoolers, a psychologist does not have to participate in the evaluation process, but the parent can always ask that a psychologist participate.) Beyond that, the law doesn't say who must be part of the team. Usually, the child's teachers are members of the team, as well as anyone else who might be working with the child (like a reading specialist or a speech therapist). The child must be assessed by properly trained and knowledgeable school personnel using reliable tests.

There is no specific number or type of "tests" that must be given to a child as part of an evaluation. The school must use a variety of testing tools and strategies to gather information on the child's development and academic and functional levels (functional level means, for example, whether the child has learned basic self-care skills).

Usually, a school will do an achievement test (a common one is called the WIAT), an ability test (like an IQ test called a WISC), and some other tests to look at the areas in which the child is struggling in school (like behavior ratings). However, no one test (such as an IQ test) can determine whether a child has a disability or needs special education.

TIP: If you do not understand why a particular test is being used, **ASK** school personnel to explain what the test is for and why it is being done. Some other places to get more information about tests and measurements include Wrightslaw (http://www.wrightslaw.com/advoc/articles/tests_measurements.html) or *Assessment of Children: Behavioral, Social, and Clinical Foundations* by Jerome M. Sattler and Robert D. Hoge.

The evaluation team must look at *all areas* related to the child's suspected disability. This includes: 1) the child's health, 2) vision, 3) hearing, 4) social skills and emotional status, 5) general intelligence, 6) academic performance, 7) communication needs, and 8) motor skills. The evaluation must be thorough enough to identify all of the child's needs.

The team must consider information about the child from many sources, including information provided by the parent. For example, if you have information from a private tutor who sees the child, you may want to share that information with the school. Your school district should have a process and/or a form for collecting parent input.

Other sources of information the team must review include teacher recommendations, the child's physical condition, the child's social or cultural background, the child's self-help skills, and any other information that helps the team make an accurate decision about whether the child has a disability and needs special services, and what those services should be. **The evaluation should take into account all the reasons why a child might be struggling in school.**

Unless it is clearly not possible to do so, the child must be evaluated using the child's native language (such as Spanish) or other way of communicating (for example, sign language) that is most likely to produce accurate information on what the child knows and can do academically and functionally.

Evaluations must take account of the child's ethnic background so that the testing will not be racially or culturally biased. Testing must also take account of a child's disability to assure that the test is fair. For example, a child who has a severe visual problem should not be given a test that relies mainly on looking at pictures.

The team cannot decide that a child needs special education if the actual cause of the child's learning problem is that the child has not had proper instruction in reading or math, or because the child does not know enough English.

TIP: It can be hard for a parent to decide if the school's team of experts has considered all necessary information and if the right tests have been used in the right way. If you are working with an expert or an advocate, show the expert or the advocate the information from the school and ask for advice. You might also want to consider an "independent evaluation." See Chapter 4 of this Guide.

WHAT DOES THE EVALUTION TEAM DECIDE?

The evaluation team first decides two things: 1) whether a child has a disability that makes it difficult for her to learn and, 2) if so, whether she needs special education services and supports as a result of that disability. The child must meet **both** criteria to be eligible for special education.

The law lists 13 different types of disabilities that qualify a child for special education services. For a list of those disabilities, see Appendix 1 of this Guide. Just because a doctor has diagnosed a child with a disability (such as Attention Deficit Hyperactivity Disorder (ADHD)) does not automatically make the child eligible for special education. To be eligible, the child must fit into at least one of the disability categories listed in special education law and the child must need special education (specially designed instruction) due to the disability.

If the team decides the child *is* eligible for special education, the team must also make **recommendations to the IEP Team** about what services are needed for the child to participate and make progress in the general curriculum offered to all children (or, for preschoolers, to participate in appropriate preschool activities).

WHAT IF MY CHILD IS FOUND INELIGIBLE FOR SPECIAL EDUCATION?

A child with a disability who does not need "specially designed instruction" may still need supports or accommodations in the school setting. **That child may be eligible for these supports under a law called Section 504 of the Rehabilitation Act of 1973.** A child who has a physical or mental disability that "substantially limits" a major life function (like learning, thinking, walking, breathing, seeing, or hearing) may qualify for reasonable accommodations or other

support services in the regular classroom.

If a child does qualify for support under Section 504, a written "**Accommodations Plan**" (also called a Chapter 15 Service Agreement or 504 Plan) must be developed for her. The Accommodations Plan sets out the changes that will be made to the child's program, and/or the supports the school will provide to her, to make sure she has the same opportunity to receive an education as children without disabilities. For example, a 504 Plan might allow a child with Attention Deficit Disorder to be seated near the teacher so the teacher can help the child stay on task, and the 504 Plan might require the teacher to maintain a daily planner for the child if the child's ADD causes her to have difficulty with organization. Some useful websites to find more information about Section 504 Accommodations Plans are www.ldonline.org and www.wrightslaw.com.

In addition, your child may be able to get extra help in school other ways. Make sure to ask your school what other tutoring programs or support services (like Supplemental Educational Services, Positive Behavior Supports, or the Student Assistance Program) are available for your child.

The school must give you written notice (called a Notice of Recommended Educational Placement/Prior Written Notice - learn more about this written notice in Chapter 9 of this Guide) telling you whether or not your child has been found eligible to receive special education services. If your child was found ineligible, you have the right to disagree with that decision and try to resolve your dispute with the school through the procedures described in Chapter 12 of this Guide.

WHAT IS DONE WITH THE RESULTS OF THE EVALUATION?

The team writes an "**Evaluation Report**" (ER) that includes a decision about whether the child is eligible to receive special education. The Evaluation Report also must include recommendations to the IEP Team about the special education and related services the child needs to participate in the regular curriculum if the child is eligible for special education.

A school district must give the parent a free copy of this report at least **10 school days** before the IEP Team meeting, unless the parent agrees to wait until the IEP Team meeting to get the report.

TIP: PDE's sample **annotated Initial Evaluation Report** can be found at: <http://www.pattan.net/files/Forms/English/ER-ANN070108.pdf>. This form explains in detail what information, at a minimum, an evaluation must include.

WHEN MUST MY CHILD BE REEVALUATED?

A child who is receiving special education must be **reevaluated at least every three years** unless the parent and school agree in writing that the three-year reevaluation should not be done. Schools must reevaluate **preschoolers** (children aged three to school-age) and **school-aged children with mental retardation** at least every **two years**. Reevaluations for children with mental retardation cannot be waived, but parents of preschoolers can agree in writing to waive the reevaluation. In addition, a child must be reevaluated before a school can determine that the child is no longer eligible for special education.

A parent or teacher can request that the child be reevaluated before the child is due for a three-year reevaluation, or the school can decide that a reevaluation is needed sooner. However, the school does not have to do more than one reevaluation each year.

A child must be reevaluated before a school can determine that the child is no longer eligible for special education. However, the school does not have to reevaluate the child if the child will no longer be eligible for special education because she has graduated with a regular diploma, or because she is has aged-out of special education (which in Pennsylvania means has completed the school term in which she turned age 21). Under these circumstances, the school district must give the child a written summary of her academic achievement and functional performance, and recommendations for how the child can achieve her postsecondary goals. For more information about graduation, see Chapter 11 of this Guide.

TIP: Think carefully before you agree to pass on (“waive”) your child’s three-year reevaluation. Three years is a long time in the life of a child. Even if the child’s disability has not changed, her needs, strengths, and weaknesses may have changed, and those changes may show that the child’s IEP should be revised.

If you think that your child needs to be reevaluated, you should send the school a written request. See Appendix 3 at the end of this Guide for a *Sample Letter Requesting a Reevaluation* as a starting point. Just like the initial evaluation, the school should give you written notice of its evaluation plan and should give you a **Permission to Reevaluate-Consent Form** to sign. (Or, if you ask for a reevaluation, the school must give you a **Permission to Reevaluate-Reevaluation Request Form** within **10 calendar days**.)

A reevaluation must be completed by a school (including charter schools) and the reevaluation report given to the family within **60 calendar days** (minus the summer months) of the school’s receipt of the signed **Permission to Reevaluate-Consent Form**.

TIP: Remember, the timeline for the school to complete the reevaluation - like the timeline for completing the initial evaluation - dates from when you sign the **Permission to Reevaluate-Consent Form**. So make sure that you get and sign that form quickly so that the timeline for the reevaluation will start to run. *And keep a copy of whatever you sign or send.*

Unless the school district gets the permission of a special education Hearing Officer, it cannot conduct a reevaluation if the parent states in writing that she does not want the child reevaluated. However, the district can conduct a reevaluation if it has made reasonable efforts to get the parent to agree and the family has not responded. For reevaluations, the parent may request a copy of the Procedural Safeguards Notice, but the school or school district is not required to give the Notice to the family automatically.

WHAT MUST A REEVALUATION DECIDE AND HOW?

One purpose of a reevaluation is to decide if the child continues to have a disability and needs special education and related services. The reevaluation should also help the IEP Team decide whether the child is making reasonable progress toward her goals, and if, reasonable progress is not being made, what changes are needed.

The reevaluation process begins with a review of existing data about the child (like PSSA scores, report cards, and progress monitoring reports) by the child's IEP Team. The Team must decide if any additional information is needed to determine if: 1) the child **continues** to have a disability and the child's **educational needs**; 2) the **present levels** of academic achievement and related developmental needs; 3) whether the child **continues** to **need special education** and related services; and 4) whether any **additions or changes** to the special education and related services are needed to allow the child to meet the **measurable annual goals** in her IEP and **to participate**, as appropriate, in the **general education curriculum**.

If the IEP Team decides that no additional information is needed to determine if the child is still eligible for special education and what the child's educational needs are, the school must tell the parent and explain why. In that situation, the school must also tell the parent that they can request further tests.

TIP: A sample **annotated Reevaluation Report** from the Pennsylvania Department of Education that explains what should be included in a reevaluation can be found at <http://www.pattan.net/files/Forms/English/RR-ANN110308.pdf>.

IS THE EVALUATION PROCESS DIFFERENT IF IT IS SUSPECTED THAT MY CHILD HAS A "SPECIFIC LEARNING DISABILITY?"

Yes! Along with all the other rules that apply to the general special education evaluation process, there are **additional steps** in the evaluation process if it is suspected that a child might have a "specific learning disability." The evaluation process for deciding whether a child has a specific learning disability (SLD) can be confusing. In addition, school districts don't have to use the same approach to make this determination. **Make sure to ASK school personnel to**

explain the process or the evaluation results to you if you don't understand something.

The Pennsylvania Department of Education has issued guidelines for identifying children with specific learning disabilities, which can be found at: www.pattan.net (type "SLD" in the search box at the top of the page). PDE's annotated Initial Evaluation Report also explains the process for deciding if a child has a SLD. In addition, **every school district** must explain its procedures for complying with the state's guidelines for identifying children with specific learning disabilities in the "**special education plan**" it submits to the state.

TIP: This evaluation process is supposed to prevent a child who is struggling academically from being identified as having a learning disability when there is actually something else causing the child's learning difficulties.

The decision that a child has a specific learning disability is made by an **evaluation team** that includes the parent, the child's regular teacher (or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of the same age as your child), and at least one person (such as a speech-language teacher, a remedial reading teacher, or a school psychologist) who has the skills to evaluate the child.

The team can decide that the child has a specific learning disability if 1) the child is behind her classmates of the same age, or 2) has not met state standards in certain language, reading, or math skills even though the child was given the right learning experiences and instruction. Then, depending on which approach the school district has selected, the first step for the team is either:

- To document that the school used a scientific, research-based strategy to improve the child's learning (for example, **Response to Intervention** or RtI); that the child received high quality instruction in a regular education setting; that research-based interventions were used for the child; and that the child was regularly monitored, or
- That the child shows a pattern of strengths and weaknesses and a severe gap between her intellectual ability and performance as compared to classmates of the same age or grade (that is, the team must decide if the

child has a "severe discrepancy" between achievement and ability).

TIP: You should ask the evaluation team what approach the school district is using - either the "severe discrepancy" approach or the "research-based intervention" model. Then, you should ask the team members to explain what the approach means for your child. If the team members are unable to answer this question, ask the special education director for an explanation and get a copy of the district's special education plan which must describe the approach the district is using.

Regardless of which approach the school district has adopted, the team must also decide that the poor school performance is not actually because the child has a problem with seeing, hearing, or physical development. The team must also decide the child's difficulties are not the result of an emotional problem, cultural or environmental problems, poverty-related problems, or limited English skills.

Next, the team has to be certain that the child's poor academic performance is not because the child did not have appropriate reading or math instruction. Therefore, the evaluation team must consider data that shows that, before or as part of the evaluation referral, the child received scientifically-based instruction from qualified staff in regular education classes as shown by observations of routine classroom instruction. To say that an instructional program or practice is grounded in **scientifically-based research** means there is **reliable evidence** that the program or practice works. The team must also consider data-based records that the child's academic achievement was repeatedly tested while she was being instructed, and that this information was given to the child's parents.

Finally, as part of the evaluation, the team must have information on the child's academic or behavior difficulty based on an observation of the child in the regular classroom or other learning environment. This information can come from a new observation by a team member, or from an observation and monitoring of the child's performance that took place before the referral for an evaluation. The child must still be evaluated within the normal **60 calendar day** timeline (minus the summer months) for completing any special education evaluation, although the parents can agree in writing to an extension.

The team must state **in writing** whether the child has a specific learning

disability, the reason for its decision, that the decision was made using the rules set out above, what behavior was seen during the observation and how that behavior affects the child's academic learning, any relevant medical findings, and its findings on the eligibility factors. The team's statement must also include information on learning strategies that were previously used to help the child, strategies to improve the child's rate of learning, and certain other information. **Each member of the evaluation team (including the parent) must state in writing whether she agrees with the report,** and if not what that team member's conclusions are.

WHAT CAN I DO IF MY SCHOOL DOES NOT FOLLOW THE TIMELINES OR OTHER RULES?

If the school doesn't conduct a complete and accurate evaluation or reevaluation, you can request mediation or begin the process of requesting a special education hearing. You may also want to consider requesting an independent evaluation, discussed in Chapter 4 of this Guide.

If the school has violated a clear legal rule, such as the timeline for conducting an evaluation or reevaluation, you can file a complaint with the Pennsylvania Department of Education's Bureau of Special Education (BSE). Appendix 7 of this Guide has the complaint form, or you can print the form out at: http://odr.pattan.net/files/odr/complaint_form_111606_eng.pdf. If your child turns out to be eligible for special education services, and the child had to wait to get those services because the school did not do the evaluation within the required time, you should ask for compensatory education (make up services) to help her catch up.

More information about resolving special education disputes can be found in Chapter 12 of this Guide.

CHAPTER 4

GETTING YOUR CHILD AN INDEPENDENT EDUCATIONAL EVALUATION

WHAT IS AN "INDEPENDENT EDUCATIONAL EVALUATION?"

An independent educational evaluation (IEE) is an evaluation of a child that is done by a person who does not work for the child's school district, public charter school, or intermediate unit (IU).

WHEN IS IT A GOOD IDEA TO GET AN INDEPENDENT EDUCATIONAL EVALUATION FOR YOUR CHILD?

It's a good idea to get an independent evaluation whenever you need more information, different information, or a second opinion about your child's disability and special education needs. An independent educational evaluation is most important when you believe the school's evaluation is not "appropriate." For example, you may want an independent evaluation if:

- The school's evaluation is not accurate (the wrong tests were used or the results do not seem correct to you); or
- The school's evaluation is not complete (important testing was not done or the evaluation report does not give you enough information to decide if the child has a disability and to talk to the Individualized Education Program (IEP) Team about what services she needs).

You may also want to get an independent evaluation because you are about to go to a Special Education Hearing and you need information about what would be an appropriate program for your child (but you probably can't get the school district to pay for this evaluation unless the evaluation the school district completed did not meet the "appropriateness" standard).

WHO SHOULD DO THE INDEPENDENT EVALUATION?

If you want the school to consider the results of the independent evaluation,

you need to make sure that the person you hire has the same "credentials" and that the evaluation meets the same "criteria" the school would use to evaluate your child. Ask the school what "credentials" and "criteria" it uses to hire evaluators and conduct evaluations. For example, schools usually use psychologists with a certificate in school psychology (called **certified school psychologists**) to test special education children.

If you hire someone who has the right credentials, the school will have to consider the independent evaluation whenever an IEP Team makes decisions about what services or placement will help the child receive a "free appropriate public education." This does not mean that the school has to follow all of the suggestions in the independent evaluation report - the school just has to "consider" the information. The independent evaluation report may also be used as evidence in a Special Education Hearing (although it is always better to have the evaluator testify in person if you can).

DOES MY SCHOOL HAVE TO PAY FOR THE INDEPENDENT EDUCATIONAL EVALUATION?

It depends. Parents can always pay for their own independent evaluations. But, you can ask the charter school or school district to pay for the independent educational evaluation if you disagree with the school's most recent evaluation (or reevaluation) of your child. There is a limit: You only have the right to ask for one free independent evaluation for each school evaluation (or reevaluation) of your child. The school can ask you why you disagree with its evaluation, but it cannot make you provide an answer or delay responding to your request for an independent evaluation.

If you ask the school to pay for the independent evaluation, the school has two choices. It may either (1) immediately agree to pay for the independent evaluation, or (2) immediately request a Special Education Hearing. If the school requests a Hearing, it will have to prove to a Hearing Officer that its evaluation was appropriate. Two outcomes are possible:

- If the Hearing Officer decides that the school's evaluation was not appropriate, the school may be ordered to pay for your independent educational evaluation.
- If the Hearing Officer decides that the school's evaluation was

appropriate, it will not order the school to pay for your independent evaluation. You can still have an independent evaluation conducted (and the school must consider the results), but you will have to pay for it yourself. You should also find out if your health insurance will cover some or all of the cost of an evaluation.

Remember, the school has a right to evaluate your child before deciding whether she has a disability and what services she needs. Only if that evaluation is not appropriate will the school have to provide the independent evaluation at public expense. This means that you can't refuse to let the school evaluate your child and force it to pay for an outside evaluation instead.

WHERE CAN I FIND AN INDEPENDENT EVALUATOR?

When you ask for an independent educational evaluation, your school should tell you the criteria it uses to conduct a similar evaluation. It should also tell you where you can get an independent educational evaluation -- schools usually do this by giving parents a list of the qualified evaluators that work nearby. However, the school cannot limit you to the evaluators on its list; you can pick any person in your area that meets the school's criteria.

Asking other parents of children with disabilities for referrals may also help you find an independent evaluator. Certain groups, such as the International Dyslexia Association (IDA), may be able to provide referrals for independent evaluators. (The website for the Pennsylvania branch of the IDA is <http://www.pbida.org/>. For a list of psychologists, click on "Resources" and then "Professionals Who Can Help.")

WHAT SHOULD I EXPECT FROM MY INDEPENDENT EVALUATOR?

That depends on the question you want the independent evaluator to answer:

- If you want to know whether your child has a disability and needs special education, you will want the evaluator to write a report that focuses on that question. You will probably also want the evaluator to include suggestions on the type of IEP services that he believes will help your child.

- Another question might be whether your child's current IEP is appropriate or whether changes should be made? If this is your question, be sure to give the evaluator a copy of your child's IEP. Ask the evaluator to write in his report which parts of the IEP need to be changed, how those parts can be changed, and why.
- You may want to ask whether your child can be educated in a regular classroom with supports. If so, ask the evaluator to write a report explaining why your child can (or cannot) be educated in a regular classroom, and ask him to give clear information on what kinds of supports your child will need to succeed in the regular classroom. (For example, if your child needs a one-to-one behavioral aide, ask the evaluator to write that in his report and to explain why this is needed).

It is very important that the evaluator help you to understand what your child needs to make meaningful progress. The more detailed the recommendations (for example, what exactly should my child's IEP say), the more useful the evaluation report will be. You need to be clear with the evaluator about what kind of information and/or assistance you are looking for, such as a written report, attendance at an IEP Team meeting, testimony at a hearing, etc. Remember that the school district must pay for the evaluation and written report, but it is not required to pay for the evaluator's attendance at meetings or testimony at a hearing.

HOW DO I REQUEST THAT THE SCHOOL PAY FOR MY CHILD'S INDEPENDENT EDUCATIONAL EVALUATION?

You should write a letter to your school with the following information:

- Tell the school that you think its evaluation (or reevaluation) of your child was inappropriate, and that you are requesting "an independent evaluation at public expense." See Appendix 4 of this Guide for a *Sample Letter Requesting an Independent Educational Evaluation*.
- Although you are not required to do so, we recommend that you give the reasons why you think the school's evaluation is not appropriate.
- Explain what kind of independent evaluation you want (educational assessment, neuropsychological assessment, functional behavioral

assessment, etc.). If you do not know what kind of evaluation would be best, ask the school, an advocate, another professional who is working with your child, or your child's doctor.

- Ask the school for information on where an independent evaluation can be obtained and the school's criteria for evaluations.

CHAPTER 5

DEVELOPING THE SPECIAL EDUCATION PROGRAM

WHAT IS AN IEP?

An IEP, or “**Individualized Education Program**,” is a written plan that describes the unique needs of a child who is eligible for special education and explains the specific services that the school will give the child.

The IEP lists the special education, related services, and other supports the child needs to make real progress in school. The IEP should explain *when* the services will begin, and *how frequently* and for *how long* they will be given (for example, two half-hour sessions of physical therapy every week). The IEP must also state *where* the services will be provided (for example, in a regular or special education classroom or a special school), and tell you what special training and equipment will be given to the school staff (teachers and aides) who work with the child. The IEP also tells you how much of the school day the child will spend with classmates who do not have disabilities.

The IEP is written by a Team of people, including the parents. School districts and charter schools *must* give the child all of the special education, related services, and other supports listed in the IEP. The IEP is the “**contract**” between you and the school for the services your child needs to make progress. If the school does not follow the IEP, you can file a complaint with Pennsylvania’s Bureau of Special Education (BSE). (See Chapter 12 of this Guide for a discussion of how to file a complaint with the BSE.)

WHO WRITES THE IEP?

The IEP is written by a Team of people. The IEP Team must include:

- The child’s parents;
- At least one special education teacher or special education provider (for example, the child’s learning support teacher or speech

therapist);

- At least one regular education teacher (if the child is, or may be, in any regular education classes);
- A school official qualified to provide or supervise specially designed instruction, who knows about the school's resources, and who is familiar with the general education curriculum (usually this is the special education director and this person is called the "LEA representative");
- Someone who can interpret the child's evaluations (this does not have to be a separate person, so the special education director might fill this role — if it is a separate person, it is usually the school psychologist);
- A gifted education teacher if the IEP is being written for a child with a disability who is also gifted; and
- The child, when appropriate.

The child must be invited to the meeting if her postsecondary goals and transition needs will be discussed at the meeting (this is required if the child will turn 16 during the next school year). If transition needs are not going to be discussed, then it is up to the parent to decide whether the child should attend the meeting.

While the people listed above must attend IEP meetings (unless they are excused by the parent), **other people can** come to the meetings. The IEP Team can include *anyone* the parent or the school believes has knowledge or expertise about the child. This means that a parent can invite an advocate (either a lawyer or a non-lawyer) to attend the IEP meeting. In addition, the school or the parent can ask an occupational therapist (OT), physical therapist (PT), or speech therapist who is working with the child to attend the IEP Team meeting. If the child has just turned three and was receiving early intervention services, the parent can ask the school to invite someone from the Infants and Toddlers Early Intervention Program.

CAN IEP TEAM MEMBERS BE EXCUSED FROM ATTENDING A MEETING?

A parent can agree *in writing* to excuse one (or more) of the IEP Team members listed above. If the IEP Team member's area of expertise *will not* be discussed at the meeting, then the parent and school may sign an agreement that the Team member can miss the meeting. If the Team member's area of expertise *is* going to be discussed at the IEP meeting, before that Team member can miss the meeting: (1) a parent must agree in writing and (2) the Team member must give the parent written input about the child before the meeting. It is important for the parent to read this information before the meeting - if you have questions about what the Team member has written you can always ask the school district to schedule a new IEP meeting so that the Team member can attend.

Remember that the school CANNOT force you to allow a Team member to miss the IEP meeting. You should only agree to excuse a Team member from the meeting if you believe that that person does not need to be at the meeting for you to understand your child's needs or to develop an appropriate IEP for your child.

WHAT STEPS MUST THE SCHOOL DISTRICT OR CHARTER SCHOOL TAKE TO MAKE SURE THAT THE PARENTS CAN ATTEND THE IEP MEETING?

The law places great emphasis on parents' participation in the IEP Team meeting. The school must take steps to get one or both of the child's parents to attend the IEP meeting. That means the school must notify parents of the meeting early enough so that they can attend, and schedule the meeting at a time and place that is convenient for all parties. The notice of the meeting must tell the parent the time, date, location, and purpose of the meeting.

The meeting notice must also explain who will be at the meeting and tell the parent that she can bring anyone with her whom she thinks has expertise or knowledge about the child. The school must also provide interpreters for parents with deafness or parents whose native language is not English if an interpreter is necessary for the parent to understand what is being discussed at the IEP meeting. The parents should let the school principal and the Director of Special Education know as soon as possible that they will require the services of an interpreter at the IEP Team meeting. Interpreters should have the training needed to help the parent participate in IEP Team meetings to the fullest extent

possible (which means an untrained bilingual school secretary should not be used as an interpreter).

If the parents cannot attend the meeting in person, the school must offer the family other ways of participating in the meeting, including conference calls. If the family does not participate in person or by phone, the school can hold the meeting without the parent - but it must keep a detailed record of its efforts to get the parent to attend.

WHAT SHOULD HAPPEN AT THE IEP TEAM MEETING?

The school may give the parents a *draft* IEP at the meeting (or before the meeting), but it cannot ignore the parents' input or refuse to make changes that the parents and the school agree are needed. When it is finished, the IEP should reflect the information discussed and decided by the Team at the meeting.

During the meeting, the IEP Team must consider the child's strengths, the parents' concerns for enhancing the education of their child, the results of the most recent evaluation, and the child's academic, developmental, and functional needs in determining what services and placement are appropriate for the child.

TIP: When you go to an IEP Team meeting, the school will ask you to sign the IEP form to show that you attended the meeting. Signing the IEP *only* shows you attended the meeting, *not* that you agree with the IEP. You need to sign a separate document - called a Notice of Recommended Educational Placement/Prior Written Notice - to show whether or not you agreed with the IEP. See Chapter 9 of this Guide for more discussion about the written notice a school must give to you.

WHAT SHOULD BE WRITTEN IN THE IEP?

You should print out the Pennsylvania Department of Education's (PDE) sample "**annotated**" IEP form for children in Kindergarten through 12th grade to help you understand what should be in your child's IEP. **It is a very useful form!** The form can be found at: <http://www.pattan.net/files/Forms/English/IEP-ANN110409.pdf>. (If you don't have access to the Internet, call the Special Education ConsultLine at 1-800-879-2301 for a copy.) You can use this form to follow along as we explain the sections of the IEP. The sample form also has

helpful comments that explain to the IEP Team what should be written in the different sections of the IEP. Your school is not required to use PDE's IEP form, but, if a different form is used, it must contain all of the types of information we list below. (The sample annotated IEP form for children from age three until they enter school can be found at:

<http://www.pattan.net/files/Forms/English/EI/IFSP-IEP-Ann070108.pdf>.)

Remember, an IEP can be of any length and can contain any amount of information. However, what is really important is whether the information in the IEP is genuinely useful to parents and school staff. Here is a quick review of the major sections of an IEP and some of the questions that the IEP Team members should ask as they write those sections.

A WALK THROUGH THE IEP

1. SPECIAL CONSIDERATIONS: In the first section of the IEP, the IEP Team must ask whether the child is blind or visually impaired, deaf or hearing impaired, if the child has needs in the areas of communication, if the child needs assistive technology (AT) devices and/or services, if the child has limited English skills, or if the child has behaviors that get in the way of her learning or that of others. The Team should keep these "special considerations" in mind when it writes the child's IEP. PDE's annotated IEP form explains these considerations in detail.

TIP: **Assistive technology** is a "special consideration" that is often overlooked by IEP Teams. Assistive technology devices include devices or special equipment that improve the child's functional or communication skills (for example, a special computer that the child uses to "talk"). Assistive technology services include help in choosing the device, and training for the child, school staff, and possibly the child's family on how to use the device. Pennsylvania's Initiative on Assistive Technology (PIAT) can provide help to parents on finding and funding AT devices (PIAT can be reached at 800-204-7428), and the Pennsylvania Training and Technical Assistance Network's (PaTTAN's) website also has information on AT resources (go to www.pattan.k12.pa.us and click on "Assistive Technology" under "Supporting Students"). ELC also has a fact sheet entitled *Assistive Technology for Students with Disabilities* at www.elc-pa.org.

TIP: Positive Behavior Supports (PBS): If the IEP Team decides that the child's behaviors are getting in the way of her learning or that of others, the IEP Team must consider and include in the IEP strategies to help the child. These strategies must reflect individual student's needs (not a "one size fits all" behavior plan) and be based on **positive** - not punitive - approaches. This could mean that behavior goals and support services are included in sections 5 and 6 of the IEP. Or, the IEP Team might write a positive behavior support plan as part of the IEP. Questions to ask include: What sets off the child's bad behaviors at school? What skills should be taught to the child so she can behave more appropriately? If problems do occur, how will they be handled? For more information about Positive Behavior Supports, see Chapter 6 of this Guide.

2. CURRENT EDUCATIONAL LEVELS: The second section of the IEP contains information on the child's **present levels of academic achievement** and **functional performance** (including social and daily living skills). It is important for this section to be completed because knowing where the child is currently helps the Team decide where the child should be going - meaning what goals should be written for the child.

Questions that this section of the IEP should answer include: What can we learn about the child's strengths and needs from the latest school district and private evaluations? What insight can the parents or the other Team members contribute from their experiences or training? This section should include the child's present levels related to current postsecondary transition goals (such as results of vocational evaluations, career surveys, etc.). Information from any Functional Behavioral Assessment (FBA) should also be part of this section. This section should include information on how the **child's disability affects her involvement and progress** in the **general education curriculum** (or, for preschoolers, her participation in age-appropriate activities). (See page 38 of this Chapter for what it means for the child to be involved and progress in the general education curriculum.) Once again, PDE's annotated IEP provides greater detail about this section.

3. TRANSITION: The third section of the IEP lists the child's postsecondary goals (these are goals for life after high school) and the transition services that the school will give the child to help her reach those goals. The point of "transition planning" is to build a bridge between school programs and the opportunities of

adult life, including higher education, employment, independent living and community participation, and to make sure the child is being prepared for life beyond high school.

This section *must* be filled out for **all children who are age 14** or older during the school year that the IEP will cover. The school and parent can agree to fill this section out earlier if that is appropriate for the child.

Questions to ask include: What academic and other skills will the child need for adult living? Are the needed skills being taught? What does the IEP Team think should be the child's measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills? Are these goals based on age-appropriate transition assessments and the child's own preferences? (If not, why not?) What transition services (including courses of study) are needed to help the child achieve the transition goals? Check out PDE's annotated IEP for more details about transition planning. More information about transition can also be found in ELC's fact sheet entitled *Transition to Adult Life for Children with Disabilities* at www.elc-pa.org and at the Pennsylvania Training and Technical Assistance Network's website (go to www.pattan.net and click on "Secondary Transition" under "Evidence-Based Practices").

TIP: Even if your child is not about to turn 14, it is often important to have the IEP Team fill out this section. For example, if your child is in eighth grade but not yet 14, and wants to go to a vocational/technical program or high school next school year, you should have the IEP Team fill out this Transition section. The Team should make sure the school helps your child take the right classes and then helps her apply to the right high school vocational/technical programs as part of her transition services! Why? By the time she is 14, it may be too late to apply!

4. PARTICIPATION IN ASSESSMENTS: In the fourth section of the IEP, the IEP Team decides whether the child can participate in state-wide (the Pennsylvania System of School Assessment or PSSA) and district-wide (local) achievement testing and whether the child needs accommodations while taking the test. A list of allowable accommodations can be found on PDE's website at: http://www.education.state.pa.us/portal/server.pt/community/testing_accommodations_security/7448. If the Team decides that the child has such significant

cognitive disabilities that taking the PSSA would not be appropriate, the child will take the Pennsylvania Alternate System of Assessment or PASA test. The Team's decision to have a child take the PASA instead of the PSSA must be explained in the IEP.

5. MEASURABLE ACADEMIC AND FUNCTIONAL GOALS: The fifth section of the IEP explains what the IEP Team, including the family, wants the child to learn this year. The IEP must list annual (year-long) functional and academic goals for the child. These goals must be "**measurable**," and must be designed to meet the child's needs. For guidance on writing measurable goals, Dr. Barbara Bateman has written several extremely useful books, including *From Gobbledygook to Clearly Written Annual IEP Goals* and *Better IEPs: How to Develop Legally Correct and Educationally Useful Programs*, which can be purchased at www.amazon.com.

The child's goals should be designed in a way so that her needs can be met to allow her to make progress and be involved in the **general education curriculum**. The "general education curriculum" means the curriculum that your school follows for all children at your child's grade level. The school's curriculum must line up with the state standards that describe what all children at the same grade level are expected to know. You can review Pennsylvania's state standards at: <http://www.pacode.com/secure/data/022/chapter4/chap4toc.html>.

Children with disabilities should be taught what all other children at their grade level are taught unless there is a good, disability-based reason why they should be taught at a different level. The school cannot refuse to include the child in the general curriculum solely because the general education curriculum would need to be modified for the child.

In order to help school districts prepare their children for statewide assessments, the Pennsylvania Department of Education has developed "assessment anchors." Assessment anchors tell schools which parts of the state standards are most important for children to learn. The assessment anchors are also helpful because they explain what children are expected to learn in simpler terms than the state "standards" and include helpful examples on what to teach the children and how. For more information on assessment anchors and to get a copy of the Department's assessment anchor "tool kit," visit: http://www.education.state.pa.us/portal/server.pt/community/Assessment_Anchors/7440/.

TIPS: The “assessment anchors” are a great place for a parent to start if she wants to make sure her child’s IEP lines up with the general curriculum. For example, you may want to ask the IEP Team to write IEP goals that are based on these anchors (since they are considered the most important concepts in the general curriculum). However, the IEP Team should focus on the anchors that are most essential to the child’s ultimate functioning because there are a lot of anchors, and the IEP could become unmanageable if the Team tried to develop goals for all the reading and math anchors.

Remember that the IEP Team must include someone who is “knowledgeable about the general education curriculum.” You should ask this person to take the lead in making sure your child’s IEP goals line up with the general curriculum.

Even though it is the school’s job to make sure that each child’s IEP is designed to help the child progress in the general curriculum, it is important for a parent to advocate forcefully for her child’s inclusion in the general education curriculum. After all, the general education curriculum is what educators have decided is important for all children to know so they can succeed in their post-school life.

For children who will take the PASA or another alternative assessment test (see section 4 above), the law requires that the IEP includes short term objectives in addition to annual goals. The short term objectives break down the yearly goals into smaller bites about what the child is expected to learn during the year to achieve the annual goals. Short term learning outcomes are also required for children who are gifted. Short term objectives are not required for other children, but the IEP Team can choose to include them.

This section of the IEP must explain how the child’s progress towards her IEP goals will be **measured** and when **progress reports** will be issued (for example, the IEP might say that the school will report the child’s progress every six weeks when report cards are normally handed out). More information about progress reporting can be found in PDE’s annotated IEP and on PaTTAN’s website (go to www.pattan.net and click on “Progress Monitoring” under “Evidence-Based

Practices”).

TIP: A “measurable annual goal” must contain the following information:

- **Condition:** The situation **or** setting **in** which the behavior is to be performed.
- The **child's name**.
- **Clearly defined behavior:** The specific action the child will be expected to do.
- **The performance criteria desired:** The level the child must show for mastery (**that is, that the skill has been learned and can be used at school and elsewhere**), the number of times the student must show the skill for mastery, and how often the teacher tests the child's mastery of the skill.

Examples of measurable annual goals are:

- Given controlled passages at the third grade level, Bobby will apply learned decoding and word analysis strategies to read 120 words correctly per minute with 94% accuracy as measured by weekly timed reading problems.
- During group discussions in her academic classes, Jane will contribute appropriately (raise hand, ask and answer questions, contribute relevant ideas) with no more than two reminder cards for 80% of daily probes for two consecutive weeks by the end of the semester.

These are NOT measurable goals:

- Bobby will improve his reading this year.
- Jane will not act out in class.

6. SPECIFIC SPECIAL EDUCATION TO BE PROVIDED:

a. Program Modifications and Specially Designed Instruction:

The sixth section of the IEP lists the **modifications and supports** the child needs to receive an appropriate education. *This is one of the most important parts of the IEP because it must tell you exactly what school personnel will do to help your child learn.*

The IEP Team should ask: What **specialized instruction, methods, and strategies** will be used by the school this year to help the child **advance toward reaching her IEP goals, be involved and make progress in the general education curriculum, and participate in extracurricular and nonacademic activities**? Are special gym classes (called "adaptive physical education") needed? This section should state what **specially designed instruction (SDI), supports, and services** the school will provide to the child.

Examples of specially designed instruction include:

- Special education teacher will provide child with reading instruction using lower level materials for the same piece of literature that others are reading.
- Counselor will give child one-on-one instruction on anger management and self-advocacy skills.

It is *not appropriate* for this section to contain only things the child will do (such as, "Johnny will go find the guidance counselor when he feels anxious").

In general, the school has the right to pick the instructional approach and method that will be used to teach your child. But, special education law requires that special education, related services, and supplementary aids and services (supports the child needs to be successful in a regular or special education classroom) included in the IEP be "based on **peer-reviewed research** to the extent practicable." This means that if there are strategies that research studies show are successful in helping children with similar learning needs learn successfully, those strategies must be included in the child's IEP - instead of approaches that do not have a proven track record of success.

For example, if your child has dyslexia, the school should choose teaching programs and strategies that have been proven to work for improving the reading skills of children with dyslexia. You should ask your school for the research that supports its choice of a reading program. If there is no research supporting the program, you can ask the school to pick a program that has been proven by research. Even if the school's program is based on research, if it is not working for your child, a new approach may be needed for your child's IEP to be appropriate.

TIP: If you are working with a private evaluator or expert, ask her to look at the research on what programs work for other children with your child's disability.

For more information on research-based practices and effective instruction, visit the Pennsylvania Training and Technical Assistance Network's website at www.pattan.net. Another site to check out is the "What Works Clearinghouse" (WWC) at <http://ies.ed.gov/ncee/wwc/>.

This section also includes the **supplementary aids and services (SAS)** the child will receive. If your child will be taught in a regular education classroom, the IEP Team should decide what services and supports the child will need to succeed there. A child with a disability should not simply be "dumped" into a regular education class without supports. All aids and services needed for the child to succeed in the regular education class must be listed on the child's IEP and provided by the school. Questions to ask about supplementary aids and services include: Are changes to the regular education program needed to help the child succeed in regular education classes? For example, does the child need more time to take tests? Are extra supports needed for the child in the regular education classroom? For example, does the child need a one-on-one aide or assistive technology? Does the special education teacher need to help the classroom teacher modify or adapt the curriculum for the child? For more information about supplementary aids and services, see Chapter 7 of this Guide.

b. Related Services:

This section of the IEP also lists the **related services** the child will receive. Related services are support services that will help your child benefit from her special education program. Examples of related services a child can receive include transportation, therapies (speech, physical, occupational, or psychological therapy), interpreting services for children who are deaf, parent training and counseling, and school health services (such as school nurse services).

The IEP must tell you **how often** these services will be provided and **how long** each session will last. (For instance, instead of just stating "speech therapy," an IEP should state: "Johnny will receive two 30-minute sessions of individual speech therapy per week.") See ELC's Fact Sheet entitled *When Is Your Child Entitled to Therapies or Other Related Services from Your School District?* at

www.elc-pa.org for more information. PDE's annotated IEP also lists examples of related services.

c. Supports for School Personnel:

This section of the IEP also tells you what help the school will give to the staff who will be teaching the child (called "**supports for school personnel**"). Staff that may need support include: administrators, regular education teachers, special education teachers, related service providers, bus drivers, and paraprofessionals (such as aides). Questions the IEP Team should ask include: Does the staff require special training to work with the child? Is a special education teacher needed to help the regular education teacher modify the curriculum or to provide extra support to the child in the regular education classroom?

d. Gifted Support Services:

This section of the IEP must also list any **support services** that are needed to help a **gifted child** who is also a child with a disability benefit from gifted education. Examples of such support services included counseling services, career guidance, flexible grouping, and transportation.

e. Extended School Year (ESY):

The last question that the IEP Team must answer in Section 6 of the IEP is whether the child needs **extended school year (ESY) services**. All children with a disability must be considered for ESY as part of their annual IEP meeting. ESY services are particularly appropriate for a child who regresses (loses skills) over the summer or a child who needs the extra time in the summer to learn skills that are crucial for the child to receive an appropriate education. **For school-aged children with severe disabilities** such as autism, serious emotional disturbance, severe mental retardation, and severe multiple disabilities, the IEP Team must meet by **February 28 of each school year** to review the child's need for ESY. **The ESY eligibility question must be answered by March 31 for those children and the parents must be given a NOREP/PWN so that the IEP Team can plan for the child's summer program.** If an IEP Team meeting has not been scheduled by the beginning of February to discuss ESY eligibility, you should write to the school district's Director of Special Education and ask for a meeting to be held as

soon as possible. For all other children, the school must decide whether the child is eligible and what program will be offered in a "timely manner." See ELC's Fact Sheet entitled, *When Is Your Child with a Disability Entitled to Extended School Year (ESY) Services*" at www.elc-pa.org for more information on this topic. PDE's annotated IEP also has several pages explaining ESY.

7. EDUCATIONAL PLACEMENT: The final two sections of the IEP (sections 7 and 8) explain *where* the child will receive services. The IEP must tell you if the child will be included in regular education classes and activities and, if so, for how much of the school day. The IEP Team must begin by deciding if the child can make progress in a regular class with **supplementary aids and services**. See Chapter 7 of this Guide for a discussion about supplementary aids and services.

The Team must then decide what amount and type of special education support the child needs. The "**amount**" of **special education support** tells you the total amount of time in a typical school day that the child receives special education supports from special education staff:

- "Itinerant support" (special education support provided for 20% or less each day);
- "Supplemental support" (special education supports provided for more than 20% of the day but less than 80% of the day); or
- "Full-time" support (supports provided for 80% or more of the day).

The "**type**" of **support** listed in the IEP tells you the child's most important learning needs - to learn academic skills (learning support), to control behaviors (emotional support), to acquire basic living skills (life skills), etc. If a child needs a high amount of support or a particular type of support, such a need does not necessarily mean that the child will be placed outside of the regular classroom. See Chapter 7 of this Guide for more information about making placement decisions.

TIP: Remember that children with disabilities must be taught with children who do not have disabilities to the maximum extent appropriate (called the "least restrictive environment" requirement). If the child cannot be in regular education classes for the whole school day, the IEP Team must consider what part of the child's program (including academic classes, non-academic classes, lunch, recess, and extracurricular activities) the child can attend with

children who are not disabled.

The “**location**” of the program is also found in this section of the IEP. If the child will not be in her home school, the IEP must explain why the child’s needs cannot be met in that school. The law prefers (but does not require) that children with IEPs be educated in the classes and schools they would attend if they did not have disabilities, and that they attend a school that is as close to home as possible. See Chapter 7 of this Guide for more discussion about the location of the program.

8. PENN DATA REPORTING: Section 8, the final section of the IEP, contains information that the state uses to track whether school districts are placing children with disabilities in programs with children who are not disabled, as opposed to separate special education programs. The IEP Team must figure out how much time a child with a disability is being educated in a regular education classroom.

WHEN MUST THE IEP BE WRITTEN?

An IEP must be in place for each child receiving special education services at the **beginning of each school year**. If your child has just been evaluated for the first time, an IEP Team meeting must be held within **30 calendar days** of the date listed on the Evaluation Report. The law requires the school to give the parent **10 calendar days** to review the Evaluation Report before this first IEP meeting, but many parents choose to waive (give up) this right in writing and to have the meeting sooner.

WHAT HAPPENS AFTER THE IEP HAS BEEN WRITTEN?

After the IEP has been finalized, the school must give the parents a **free copy of the IEP** along with a form called a **Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)**. The NOREP/PWN form asks the parents to say (in writing) whether they approve the IEP. (More information about the NOREP/PWN can be found in Chapter 9 of this Guide.) If the IEP Team has just written the child’s first IEP, special education services cannot start unless the parent approves the IEP in writing on the NOREP/PWN. For later IEPs, the new IEP can start if the parent returns a signed NOREP/PWN that has the “I approve” box checked or if the parent does not return the NOREP at all within

10 calendar days.

When the IEP is approved, the school must explain to its staff their responsibilities and the specific supports, modifications, and accommodations that they must give the child under the IEP. The IEP document itself must also be available for the staff to review. "Staff" includes: the child's regular and special education teachers, her related service providers, and any other person who is responsible for following the IEP. Don't assume that all the people who are working with your child have access to the most recent copy of your child's IEP. You should check with all educators, therapists, and anyone else who may have a role to play (such as a school bus driver or an aide), to make sure that they have a copy of your child's most recent IEP. If they do not, make sure the school provides them with access to a copy.

WHAT IF I DON'T AGREE WITH THE IEP OFFERED BY THE DISTRICT?

If you do not agree with the proposed IEP and placement, you should check the "I do not approve," box on the NOREP/PWN. You then have a number of options - requesting a meeting, mediation, or a special education hearing. For more information on which option to choose, see Chapter 12 of this Guide. If your child has not been in special education before, unless you and the school agree otherwise, your child will stay in regular education classes while you are resolving your disagreement with the school. If your child is already receiving special education services, your child will continue to receive the services in her last IEP until the disagreement about the new IEP is resolved.

If you like parts of the new IEP but not all of it, you can ask the school to start some of the new IEP services while you work out your areas of disagreement. For example, if you and the school agree on your child's new academic goals and services, but disagree about the amount or type of related services that your child needs, then the school should agree to begin providing the academic services to the child while you use mediation or a hearing to figure out what should be included in the related services part of the new IEP.

WHEN MUST THE SCHOOL START FOLLOWING THE NEW IEP?

A child in any public school (including charter schools) must be given the services in her IEP (at the location listed on the IEP) no later than **10 school days** after the IEP is completed. For preschoolers with disabilities (between age three and school-age), the services must be given to the child within **14 calendar days** of the parents' agreement with the IEP.

HOW OFTEN MUST A CHILD'S IEP BE REVIEWED AND CHANGED?

The IEP Team *must* meet at least **once every year** to review and revise the IEP based on: the child's progress on her annual goals, the child's progress in the general education curriculum, any reevaluations that have been done, and parent or teacher concerns.

If the parent agrees, the IEP can also be amended (changed) between the yearly meetings *without holding an IEP Team meeting*. The IEP amendment must be in writing. The school *must* tell all of the IEP Team members about the change. *A parent should always request a copy of an IEP amendment* - the school does not have to give you a copy unless you ask for it.

While the school must make sure the IEP Team meets every year, **parents have the right to ask for more frequent IEP Team meetings**. The law does not limit the number of IEP meetings parents can request. If your child is having problems, and you believe that her IEP should be reviewed, send a letter to the school and ask for an IEP Team meeting. *A Sample Letter Requesting an IEP Team Meeting* can be found in Appendix 5 of this Guide. If the school does not have the meeting quickly, the parent can ask for IEP Team Facilitation, request mediation, or request a special education hearing. (For more information on these options, see Chapter 12 of this Guide.)

WHAT HAPPENS IF MY FAMILY MOVES TO A NEW DISTRICT OR MY CHILD DECIDES TO ENROLL IN (OR LEAVE) A CHARTER SCHOOL?

If a child with an IEP from a public school district or a charter school moves to a new school district or charter school, the new school must provide the child with a free appropriate public education. This means that the child must be given services comparable to those in the last IEP until the new school either (1) adopts

the old school's IEP as its own, or (2) implements a new IEP that has been written at an IEP Team meeting with the family at the new school. This rule applies whenever a child moves from one public school or charter school to another public school or charter school during the school year - even if the child moves to Pennsylvania from another state! However, if the child is coming from another state, the school may ask the parents for permission to evaluate the child before writing a new IEP. But in the meantime, the child must be given services comparable to those in the last IEP.

Whenever a child changes school districts (or goes to a new charter school), the new school must request the child's school records, including the IEP and other special education records, from the old school. The law says the new school has to make this request "promptly." The old school must respond to this request by sending the records. If the old school is in Pennsylvania, then it has **10 school days** to send the records to the child's new school. (If the old school is out of state, it must respond "promptly.") The new school must enroll your child right away, but at least within **five (5) business days**, even if the old school has not yet sent the child's records.

TIP: The new school *cannot* refuse to enroll your child because it does not have your child's IEP or other records from the old school district. For more information about school enrollment in Pennsylvania, see ELC's website at www.elc-pa.org.

WHAT IF THE CHILD LIVES IN A RESIDENTIAL FACILITY, HOSPITAL, A GROUP HOME, OR A FOSTER HOME?

The school district where the foster home, residential facility, or group home is located is responsible for the child's regular and special education services. Just like children who live with their parents, children in residential facilities have a right to be educated in the "least restrictive" setting that is appropriate for the child, including the local public schools. If the child's IEP cannot be provided in the local school system, or there is another reason why the child cannot attend the public schools (for example, a court has ordered that the child stay on-site for her education), the local district must still make sure that the child receives all needed special education services. This could include contracting with the local Intermediate Unit to operate a program for that child on the facility's grounds.

CHAPTER 6

POSITIVE BEHAVIOR SUPPORT AND LIMITATIONS ON THE USE OF RESTRAINTS

HOW CAN THE IEP TEAM ADDRESS BEHAVIORAL ISSUES MY CHILD IS HAVING?

If you think that your child's behaviors are harming her success at school, you should write to the principal and request an IEP Team meeting. At the IEP meeting, the Team should discuss the problems the child has at school and suggest changes that might help stop the behaviors. The IEP Team must ask two questions: (1) Do the child's behaviors hurt the child's ability to learn? and (2) Do the child's behaviors hurt other children's ability to learn? If the answer is "yes" to either question, you should request that your child receive a "**functional behavior assessment**" (FBA) (an evaluation of what things cause the misbehavior). The FBA should be used by the Team to write a Positive Behavior Support Plan (PBSP).

A PBSP should include techniques and interventions that are based on research and are the least intrusive possible for the child. You should make sure that the PBSP is part of your child's IEP and is based on positive measures designed to help, not punish, your child. The IEP Team should include goals and specially designed instruction in the child's IEP that reinforce positive behavior, such as positive verbal statements from school staff. The Team should not include negative or aversive techniques, which are techniques that make the child have a negative association with the problem behavior.

If the behaviors do not improve, the IEP Team may need to meet again to change the PBSP and other provisions of the IEP to address the behavior. The use of restraints (discussed in more detail below) to control a child's behavior may be used only as a last resort and only after other less restrictive measures have been tried.

Hopefully, with a Functional Behavior Assessment and an appropriate Behavior Support Plan using positive behavioral techniques, the child's behavior will improve. If the school does decide to discipline the child, for example by suspending, expelling, or transferring the child to another school setting, there are special protections that apply to special education children and to some children who may have disabilities that have not yet been identified. For more information about these protections, see Chapter 6 of this Guide.

Tip: A Functional Behavior Assessment Worksheet can be found at <http://www.pattan.k12.pa.us/files/Behavior/FBA070808.pdf>. A sample Positive Behavior Support Plan can be found at <http://www.pattan.k12.pa.us/files/Behavior/PBSP070808.pdf>. If your child is having behavior problems in school, you should get copies of these documents and share them with your IEP Team. The Pennsylvania Training and Technical Assistance Network's website also has more information about behavior supports, including consultants who can help schools do FBAs. Go to www.pattan.k12.pa.us and under "Evidence-Based Practices," click on "Behavior."

DOES THE LAW LIMIT THE USE OF RESTRAINTS BY SCHOOLS?

Yes. The law limits the use of restraints by schools to control the behavior of children with disabilities. Restraints are the use of physical force to stop a child from freely moving. An example of a restraint is a teacher holding down a child. If a school employee provides hand-over-hand assistance to a child to eat or holds a child's hand to cross the road safely, this is not considered a restraint that is subject to restrictions under the law.

A school can use restraints to control a child's serious or frequent aggressive or self-injurious behavior only if:

- the child is a clear and present danger to himself or to others, and
- other less restrictive methods to control the behavior will not work.

If a school does use restraints under these circumstances, it must hold an IEP Team meeting within **10 school days** of the incident, unless the parent agrees

in writing that no meeting is needed. At the meeting, the Team should consider whether the child needs a functional behavior assessment, a reevaluation, a new positive behavior support plan, or a change of placement.

In addition, schools must collect and report information on the use of restraints to control aggressive behavior to the Pennsylvania Department of Education. The Bureau of Special Education has developed a web-based system for tracking the use of restraints by schools, and the Bureau must review this data whenever it regularly monitors a district for its compliance with special education laws.

For some children, the use of restraints may be appropriate as part of the child's IEP, at least for some time period. The IEP Team may decide to include the use of restraints in a child's IEP if the restraints are used along with Positive Behavior Support and the child is taught skills to stop the problem behavior. Staff that will use the restraints must receive appropriate training. If restraints are part of a child's IEP, there must be a plan in place to eliminate the need for restraints in the future. Restraints cannot be part of a child's IEP for the convenience of school staff or as punishment of the child.

Schools may use mechanical restraints (such as seatbelts and safety harnesses) to control a child's involuntary movements, prevent a child from harming himself, or promote proper body positioning only if use of such restraints is:

- recommended by a qualified medical professional,
- included in the child's IEP, and
- agreed to by the parents.

The use of prone restraints, in which a child is held face down on the floor, cannot be used at school under any circumstances.

If you believe that a school has used restraints inappropriately or used restraints that were not included in your child's IEP, you should ask for an IEP Team meeting to discuss the matter. You can also file a complaint with the Bureau of Special Education if the school failed to follow any procedures in your child's IEP about the use of restraints. If the misuse or unauthorized use of restraints

has injured your child, you may want to consult with a private attorney about how to proceed.

CHAPTER 7

DECIDING WHERE YOUR CHILD WILL GET SERVICES: THE PLACEMENT DECISION

Once the IEP Team has developed an appropriate program for a child, the Team must then determine the appropriate placement. The placement decision must be based on the child's needs, not on administrative convenience or the concerns of school officials. An important factor in figuring out a child's placement is the "least restrictive environment" requirement. The law states that children with disabilities must be educated in regular education classes with other children who do not have disabilities as much as is appropriate. Sometimes this is called the "inclusion" of children with disabilities in the regular education environment.

HOW WILL MY CHILD'S PLACEMENT BE DECIDED?

The family is part of the IEP Team that decides what educational placement will work for the child. The Team must also include a school district staff person knowledgeable about the meaning of the evaluation data and the school or school district's placement options. If the child is or may be in regular education classes, a regular education teacher must also participate with the Team.

The school or school district must give the parent a written invitation to the meeting at which the educational placement decision will be made and must make the same effort to include the parent that applies to any IEP Team meeting (in fact, the Team usually decides the child's placement at the same meeting or series of meetings at which the child's program is developed). The school or school district can make the placement decision at a meeting that does not include the parent, but only if it can document that it made repeated efforts to include the parent, including offering alternate means of participating such as video conferences and conference calls.

The placement decision must be based on the child's individualized needs as described in the child's IEP and evaluations. When an IEP Team meets, the Team must first discuss and write the child's IEP, which outlines the child's strengths and weaknesses, identifies the child's learning goals for the year, and lists the amount and type of special services the child needs in order to make educational progress at school. (For more information on IEPs, see Chapter 5 of this Guide.) At the end of the IEP form, the Team must write down how much time the child will spend in a regular classroom, and how much time (if any) she will spend in a pull-out special education classroom. If the child needs a pull-out classroom to make educational progress, the Team must decide *what kind* of separate program the child needs and for *how much* of the school day. (This is explained more below).

Schools must allow parents to have reasonable access to their child's classrooms consistent with the visitation policy of the school. So a parent can visit her child's current classroom to determine whether it is an appropriate placement for the child to receive special education services. Although it is not clear whether parents have a right to visit a classroom that the child does not attend but that the school is proposing for the child's placement, such a visit would be helpful in determining the appropriate placement for the child and the parent should feel free to ask to visit.

WHAT PLACEMENT AND SUPPORT OPTIONS SHOULD BE AVAILABLE IN MY SCHOOL OR SCHOOL DISTRICT?

The law requires all charter schools and school districts to have a *continuum* of regular and special education placements available for their children. The options available should include:

- Regular education classes with itinerant support services;
- Supplemental (part-time) and full-time special education classes in regular schools;
- For children whose needs cannot be met in a public school, private schools that can meet the needs of children with disabilities; and
- Instruction in the home or in a hospital, if medically necessary (for instance, some medically fragile children may be too sick or fragile to attend school and may need to be educated at home for some period).

School districts usually operate some special education classrooms, and many

send children to classrooms run by the local Intermediate Unit (IU) or use the IU's resources in other ways. The placement that the Team chooses must provide all of the services that the Team has included in the child's IEP. For example, if the Team writes in the IEP that the child needs an hour each day of special education help in a regular classroom in her neighborhood school, the neighborhood school must make sure that she has that help.

The IEP Team also decides the *type of support* the child needs and includes this information in the IEP. This decision is based on the child's most important learning need. Examples are:

- Learning Support
- Life Skills Support
- Emotional Support
- Deaf and Hearing Impaired Support
- Blind and Visually Impaired Support
- Speech and Language Support
- Physical Support
- Autistic Support
- Multiple Disabilities Support

If the child primarily needs to focus on academic skills, "learning support" might be selected. If the child needs to learn to control behaviors that interfere with her learning, the choice might be "emotional support." Or if a child needs to learn basic life skills such as dressing, feeding, or basic academics, "life skills" might be selected. Depending on the child's disabilities, the Team may decide that more than one type of support is appropriate.

REMEMBER: The type of support a child receives does not necessarily determine her placement. For example, a child who receives learning support may be placed in a regular education classroom for all of the school day, or may be placed in a special education class for learning support children for part or all of the school day.

HOW DOES THE IEP TEAM DECIDE THE "LEAST RESTRICTIVE" PLACEMENT FOR MY CHILD?

Just because a child needs special education does not mean that the child will be taken out of her regular classroom and put in a special education classroom for her entire school day. Children with disabilities have a right to be educated in a regular classroom if they can make reasonable educational progress in that setting (and if their behaviors aren't too disruptive in that setting) when they are given extra supports. These supports are called "supplementary aids and services." The question that the IEP Team should ask is not how the child will learn or behave in the regular classroom alone - but how they will learn and behave in that classroom when they are given supplementary aids and services.

Supplementary aids and services are aids, services, and other supports that help a child succeed in regular education classes, other education-related settings, extracurricular activities, and nonacademic settings (like lunch). Examples of supplementary aids and services include:

- A modified desk or a communication device;
- Changes to the curriculum used in the regular education class;
- Changes to the schedule used in the regular education class;
- Support to the child or regular education teacher from a special education teacher;
- Training provided by the school to the child's teachers, therapists and other personnel working with the child; and/or
- A personal aide for the child.

The Pennsylvania Department of Education has a helpful fact sheet - found at <http://www.pattan.net/files/Gaskin/SuplmntryAids-Svcs072809.pdf> - which explains supplementary aids and services and provides guidance to IEP Teams in considering the full range of supplementary aids and services. More information about what consideration the IEP Team must give to the use of supplementary aids and services can be found in PDE's annotated IEP form at: <http://www.pattan.net/files/Forms/English/IEP-ANN110409.pdf> (see pages 37-38).

The IEP Team should begin the discussion of the child's placement by first

considering a regular education classroom with supplementary aids and services. If a child can benefit from education in a regular education classroom with supplementary aids and services, then that should be her placement. Educational benefit is measured by progress toward the child's IEP goals (academic goals or other goals), not by whether the child can do all the work in the regular education classroom. When deciding the least restrictive placement for a child, a school **may not refuse** to place a child in a regular education classroom because:

- the child cannot do the same work at the same level as the other children in the regular education class if the child can make meaningful progress on the goals in his IEP in a regular education class;
- the placement would be more expensive or inconvenient to the school;
- the child has a certain type of disability or because the disability is severe in the school's view (for example, a school cannot have a policy that places all children with autism in an autistic support classroom);
- there is no room in the regular classroom for more children, but there is room in the special education classroom;
- the curriculum used in that classroom has to be modified for the child because of her disability; or
- the child would make more academic progress in a special education classroom.

Even if a child with a disability must be in a "pull-out" program for some of her academic classes (for example, if she needs a part-time class for reading), the child should remain in the regular education setting (with supports if needed) for the rest of her academic classes and for non-academic and extracurricular activities (lunch, recess, music class, etc.) if appropriate for that child.

Children who need a special education classroom should be placed in the same school they would attend if they were not disabled (the "neighborhood school") unless their special education needs require that they be educated elsewhere. The school chosen for the child should be as close as possible to the child's home.

WHAT SHOULD THE IEP TEAM WRITE IN THE IEP ABOUT MY CHILD'S PLACEMENT?

In making a placement decision for a child, the IEP Team should decide the following and record it in the IEP:

- Type of support the child will receive (learning support, life skills support, etc.);
- Whether the child can be educated in a regular education classroom for all or part of the day;
- Supplementary aids and services that will be provided to help the child be included in a regular education classroom;
- Amount of time the child will spend outside of the regular education classroom, if any ;
- The name of the school district and the specific school building where the child will receive services, and whether it is the school the child would attend if the child did not have an IEP (the child's "neighborhood school").

Because of a lawsuit against the state (called *Gaskin*, which focused on the right of children with disabilities to be in the least restrictive environment), school districts must include lots of detailed information in the child's IEP about the child's placement (called the Penn Data Reporting section of the IEP). For more information on the *Gaskin* lawsuit and settlement, visit:

<http://www.pattan.net/files/Gaskin/GaskinAgreeOverview1008.pdf>.

TIP: By the end of the placement discussion, you need to understand *exactly* the type of support your child will get (for example, learning support), how much she will get (for example, itinerant support), and where she will receive the support (for example, a regular education classroom in her neighborhood school). Ask questions if you don't understand anything!

WHAT HAPPENS ONCE THE IEP TEAM DECIDES YOUR CHILD'S PLACEMENT?

Once the IEP Team decides the child's placement, then the school must give you a **Notice of Recommended Educational Placement/Prior Written Notice** (NOREP/PWN) that describes what placement has been recommended for your child, why, and what other options were considered. You must then decide whether to approve or disapprove the recommended placement. If you disapprove the proposed placement, and ask for mediation or a special education hearing, your child remains (or "stays put") in her current placement until your disagreement with the school gets resolved. For more information about the NOREP/PWN and how to resolve disputes about placement and other issues, see Chapters 9 and 12 of this Guide.

ARE THERE RULES THAT LIMIT THE AGE RANGE OF THE CHILDREN IN A SPECIAL EDUCATION CLASS AND SET A MAXIMUM CASELOAD FOR A SPECIAL EDUCATION TEACHER?

Yes. When the child is attending a special education class in a school district or IU-operated program for children in K-12th grade, the other children in her class must be near her age. The maximum age range allowed in classrooms serving children with disabilities is three years for grades K-6, and four years for grades 7-12. The IEP Team can decide that an exception to this rule is appropriate for a particular child, but it must explain in the IEP why it made an exception to the rule for that child.

State law also sets out the maximum number of children that can be on a special education teacher's caseload in the various types of special education support programs:

| | Itinerant | Supplemental | Full-Time |
|-------------------------------|------------------|---------------------|-------------------------------------|
| Learning Support | 50 | 20 | 12 |
| Life Skills Support | 20 | 20 | 12 (grades K-6) 15 (Grades 7-12) |
| Emotional Support | 50 | 20 | 12 |
| Deaf/ Hearing Impaired | 50 | 15 | 8 |
| Blind/ Visually Impaired | 50 | 15 | 12 |
| Speech and Language | 65 | | 8 |
| Physical Support | 50 | 15 | 12 |
| Autistic Support | 12 | 8 | 8 |
| Multiple Disabilities Support | 12 | 8 | 8 |

For purposes of determining the appropriate caseload, a child is:

- a "full-time" child if she receives supports and services by special education personnel for 80% or more of the school day;
- a "supplemental" child if she receives supports and services by special education personnel between 20% and 80% of the school day;
- an "itinerant" child if she receives supports and services by special education personnel for 20% or less of the school day.

A school district cannot go beyond the numbers in this regulation unless it first gets approval from the Pennsylvania Department of Education after a process that gives parents, teachers, and others a chance to comment on the proposed changes.

ARE THERE ANY REQUIREMENTS FOR SPECIAL EDUCATION CLASSROOM SPACE AND LOCATION?

Schools must provide children with disabilities appropriate classroom space. The room must be a space that was designed to be used as a classroom. The classroom must be close to the ebb and flow of school activities. The noise level in the classroom must be reasonable to allow the children to learn. The classroom must be accessible to children with disabilities and contain at least 28 square feet of space for each child. For example, if a school uses an old storage closet for a special education classroom, it may be violating the law.

CHAPTER 8

SCHOOL DISCIPLINE FOR CHILDREN WITH DISABILITIES

WHAT PUNISHMENT CAN THE SCHOOL IMPOSE ON MY CHILD?

The school cannot punish a child with a disability more harshly than it would punish a child without a disability under the same circumstances. The school must follow the same rules it applies to all children. For example, the school can only punish a child if they break a rule that is listed in the school's code of conduct. You should get a copy of the code of conduct at the start of the year. If you do not have a copy, you should ask to see the copy that is kept in the school's library. Also check your school district's website to see if the code is online. For more information on the rules that school districts must follow for all children, see ELC's Fact Sheets on school discipline at www.elc-pa.org.

Sometimes, the rule that the child broke allows the school to suspend a child, expel her, or transfer her to another school (in Pennsylvania often called alternative education programs for "disruptive youth"). A child with a disability may have extra protections under special education law. The full protections of this law apply only if: (1) the penalty the school district is seeking qualifies as a "change in placement," (2) the behavior was a "manifestation" of the child's disability, and (3) there were no "special circumstances." For an overview of the rules explained below, see the *Discipline Flowchart: Children with IEPs in Public Schools* in Appendix 8 of this Guide.

Question 1: Is the Proposed Discipline a Change in Placement?

- **Children with mental retardation who attend public school districts and charter schools:** Any suspension, expulsion, or transfer to another school of a child with mental retardation is considered a change in placement - even a one day suspension.

- **Children with other disabilities who have IEPs and who attend public school districts and charter schools:**
 - A suspension of between one (1) and 10 days is not a change in placement, so the school can suspend a child for this length of time without following any special rules. However, remember that the school district must still follow the rules that apply to all children.
 - Any exclusion from school for more than 10 days in a row is an expulsion and a change in placement.
 - Suspensions totaling more than 15 school days throughout the year are a change in placement. For example, if a child has already been suspended for five (5) days, and then again for 10 days, the next day of suspension would be a change in placement.
 - Suspensions totaling between 11-15 days that amount to a "pattern" can also be a "change in placement." To figure out if the child had a "pattern" of suspensions, you should consider if:
 - the child has been suspended for a total of more than 10 days in a school year and another suspension is being proposed;
 - the child is being suspended for behavior that is "substantially similar" to behavior for which the child has previously been suspended;
 - the length of each suspension;
 - the total time the child has been suspended; and
 - how close together the suspensions have been.
 - A transfer to another educational setting (including an alternative school) for more than 10 *school* days in a row OR for more than 15 total *school* days in the school year is also a change in placement.

If the proposed discipline is NOT a change in placement, the public school or charter school may discipline your child using only the rules that apply to children without disabilities.

If the proposed discipline IS a change in placement, the school must hold a manifestation determination meeting.

Question 2: Was the behavior a manifestation of the child's disability?

The school must have a manifestation determination meeting within **10 school days** of its proposed discipline that would constitute a change in placement for a child. While you are waiting for the meeting, the school may not transfer your child to a new school setting unless the child's misbehavior involved drugs, guns, or serious injury to another person, or if a Hearing Officer has found that keeping your child in the same program would be dangerous for the child or others. We discuss these "special circumstances" and the "dangerousness" exception in more detail below.

The parent and any members of the IEP Team that the parent and the school agree are needed must come to the manifestation meeting. The Team should review information from the child's file, the child's IEP, teacher observations, and information from the parent and then ask two questions:

1. Was the child's misbehavior caused by, or directly and substantially related to, the child's disability?

For example: if your child has a hearing impairment and did not follow the teacher's directions to stop talking and sit down because the child could not hear the directions, the Team should decide that the misbehavior meets this test.

2. Was the child's misbehavior a direct result of the school's failure to follow the child's IEP?

For example: A child might have a behavior plan allowing her to go to a cooling off room (like the guidance office) when she is upset. If the child yells at a substitute teacher who has refused to let her go to the guidance office (maybe because the substitute does not know about the behavior plan), then the child's behavior might meet this test.

If the answer to either question is "yes," the Team must conclude that the child's misbehavior was a "manifestation" of her disability. The state's Manifestation Determination Worksheet can be found at: <http://www.pattan.net/files/Behavior/Manif-DetermWksht100809.pdf>. Print out this worksheet and bring it to your manifestation determination meeting so that everyone will be on the same page about what rules to follow.

If the Team decides the child's behavior WAS a "manifestation" of her disability, the child **CANNOT** be suspended, expelled, or transferred to a new school setting as punishment for the misbehavior. (Again, the only exceptions are if the child's misbehavior involved drugs, weapons, or serious injury to another person - see the "special circumstances" rules below). In addition, the IEP Team must conduct a functional behavior assessment for the child unless one has already been done. The school must also either develop a behavioral intervention plan or review and revise the plan that already exists.

If the Team decides that the child's behavior was NOT a "manifestation" of her disability, the school can discipline the child the same way it disciplines children who do not have disabilities. This could include a long-term transfer to a new school or an alternative school, or even an expulsion by the local School Board. However, even if the child is expelled from school, she must still receive special education services (more below).

What happens if the school decides that the child's conduct was NOT a manifestation of her disability and the parent disagrees?

If the school decides that the behavior was not a "manifestation" of the disability, it may discipline the child. The school should give the family a Notice of Recommended Educational Placement/Prior Written Notice or NOREP/PWN that explains the change in placement. The school must include a copy of the "Procedural Safeguard Notice" (a document that explains the child's and parents' legal rights) with the NOREP/PWN. The NOREP/PWN tells the family how the school or school district is proposing to discipline the child and why. It also gives the family information on what other options the school or school district considered, and gives the family the opportunity to agree or disagree with the proposal. If the family disagrees, they can request mediation or a special education hearing (a due process hearing). For more information about the NOREP/PWN, and about how to

resolve disputes, see Chapters 9 and 12 of this Guide.

If the parent requests a due process hearing to challenge the manifestation determination, the hearing must be concluded within **20 school days**, and the Hearing Officer must reach a decision in **10 more school days**. If the Hearing Officer agrees with the school that the child's behavior was not a manifestation of the child's disability, then the disciplinary change of placement stays in effect. If the Hearing Officer agrees with the parent that the child's behavior was a manifestation of the disability, he must order the school to return the child to the placement she was in before the misbehavior. **However, in the meantime the school district can move the child to an alternative educational setting.**

Question 3: What happens if my child's misbehavior involved drugs, a weapon, or serious injury to someone (special circumstances)?

A child's misbehavior is a "special circumstance" if it involves illegal drugs, weapons, selling prescription drugs, or serious bodily harm to another person at school or a school-related activity. "Serious bodily injury" must be really serious to count - pushing someone (even a teacher) or scratching them should not be enough. Otherwise, if your child's misbehavior is one of these "special circumstances," the school can **immediately** move your child to an alternative educational setting (an alternative school) for up to 45 *school* days **even if the child has mental retardation, and even if the school agrees with the parent that the misbehavior was a "manifestation" of the child's disability.** Of course, even in a case involving a special circumstance, you can ask your child's school to allow her to stay where she is, and you can request an IEP Team meeting to talk about other ways to deal with her behavior (such as modifying her behavior plan or providing counseling in school) instead of moving her.

For example, if your child has mental retardation and a teacher finds a marijuana joint in your child's pocket, the school can immediately transfer your child to an alternative school for up to **45 school days**. The school must still have a "manifestation" meeting within **10 school days**. If the Team decides that having the drug was a manifestation

of the child's disability, it must conduct a functional behavior assessment and/or revise your child's behavior plan, but your child can still be forced to stay in the alternative school for the rest of the 45 days.

Are there other ways that a school can send my child to (or force my child to stay in) an alternative disciplinary school without my permission?

Remember, a school can always transfer a child with a disability to an alternative disciplinary school if the parent agrees. The school can also transfer the child to an alternative school if either (1) the school district has concluded or both parties agree that the behavior is not a manifestation of the disability and the school's published discipline rules allow the child to be transferred for her misbehavior, or (2) the behavior involved drugs, a weapon, or serious injury to another person.

In addition, a school can ask a Hearing Officer to transfer the child to an alternative school for up to **45 school days**. To get such an order the school must prove to the Hearing Officer that keeping the child in the current placement "is substantially likely to result in injury to the child or to others." If the school cannot prove this to the Hearing Officer, then the child may not be transferred.

If your child has already been transferred to an alternative school for 45 days because her misbehavior involved drugs, weapon, or serious injury to another person, a school can ask a Hearing Officer to order that she stay in the alternative school for another **45 school days**. To get such an order the school must prove to the Hearing Officer that it would be dangerous to return the child to her previous school setting.

If my child has been suspended, expelled, or transferred to another educational placement, will she still receive special education services?

Any child who is suspended has the right to make up the school work she misses. This state law applies even if the suspension is so short that it doesn't count as a "change in placement."

If a school "changes the placement" of a child with a disability, federal law requires the school to provide her with enough educational services to participate in the general education curriculum (what all children in her grade are learning) and to make progress on her IEP goals. This is true even if the child has been expelled or transferred to an alternative school. In addition, when the school "changes the placement" of a child for discipline reasons, it must hold an IEP meeting to schedule a functional behavior assessment for the child (if one hasn't already been done). This assessment should give the IEP Team information on the things that "trigger" the child's misbehavior and give the Team suggestions on how to prevent the misbehavior. The IEP Team should also write or revise the child's behavior plan.

What if I think my child has a disability, but she does not have an IEP?

The rules in this chapter apply if the school "had knowledge" *before the child's misconduct* that the child had a disability - even if your child didn't have an IEP. The law says that a school district or a charter school is considered to have "knowledge" that the child has a disability in three situations:

1. Prior to the incident, the parents had expressed a concern that the child needed special education in writing to the child's teacher or school administrator; or
2. Prior to the incident, the parent had requested an evaluation; or
3. Prior to the incident, the teacher or other school staff expressed specific concerns about the child's pattern of behavior to the director of special education or other supervisory personnel of the school.

If none of these rules apply to your situation, your child can be punished by the school under the rules that apply to children who do not have disabilities. However, if you ask for an evaluation while your child is being punished (for example, you put in your request *after* your child was sent to an alternative school or expelled), the school must conduct the evaluation quickly. If your child is found eligible for services, the school must meet with you to develop an IEP. (See Chapter 5 of this Guide.)

It is important to note that a school does not have to treat the child as eligible and follow the special education discipline rules if: (1) the parent has refused to allow the school to evaluate the child in the past, (2) the parent has refused special education services for the child in the past, or (3) the school evaluated the child in the past and concluded that the child did not have a disability.

Can the school report my child with a disability to the police?

Special education law does not stop a charter school or school district from reporting a crime to the police. With the parents' (and in some cases the older child's) consent, the school must forward the child's discipline and special education records to those authorities. If the child has a positive behavior support plan, the school must do an updated functional behavior assessment and develop a new positive behavior support plan if a child is referred to the police.

Do the same rules apply when a child is "suspended" from the school bus or is placed in in-school suspension?

The same rules that apply to out-of-school suspensions apply to in-school suspensions if the child will be removed from her special education program or placement. A proposed suspension from the school bus is also subject to the same rules as a proposed out-of-school suspension if transportation is listed on the child's IEP.

For example, if your child acts out on the bus, the school may want to suspend your child from the bus for three weeks. If so, you need to check to see if bus transportation is listed as a related service on your child's IEP. If it is, then removing your child from the bus for three weeks counts as a "change in placement" (since it is for more than **10 school days** in a row). The school must hold a manifestation determination meeting within **10 school days** and also must have an IEP meeting to arrange for a functional behavior assessment (if not already done) and draft or revise a behavior plan for your child on the

bus. If your child's behavior IS a manifestation of his disability, then the school cannot change your child's placement (so, after **nine (9) school days**, your child must be allowed back on the bus!). Remember that even one day of school or bus exclusion is a "change in placement" for a child with mental retardation.

Does the law prohibit any forms of discipline?

State law prohibits public school districts from ever using the following types of discipline for children with disabilities:

- corporal punishment
- punishing a child for behavior that is a manifestation of the child's disability
- using "noxious" substances (for example, pepper spray or mace)
- withholding meals, fresh air, or water
- serial suspensions
- electric shock
- locking or keeping the child in a room, space, or box from which she cannot easily leave, and
- any treatment that is demeaning.

What happens if the parent cannot reach agreement with school officials about discipline issues?

If the family and school officials cannot agree on any of the issues discussed in this section, the parents can use the Special Education Procedural Safeguard System described in Chapter 12 of this Guide. Examples of the types of issues that may require a hearing include: what should be in the child's behavior support plan; was the misbehavior a "manifestation" of the child's disability; did the school have "knowledge" that a child without an IEP had a disability before the misbehavior; or was there a safety issue that justifies putting the child in an alternative setting over the family's objection.

CHAPTER 9

RECEIVING NOTICE FROM YOUR SCHOOL: NOREP/PWN AND THE PROCEDURAL SAFEGUARDS NOTICE

THE NOREP/PWN

The "Notice of Recommended Educational Placement/Prior Written Notice" (NOREP/PWN) is a very important document that contains critical information from the school about a child's educational program and placement. Parents should pay close attention when they get this document from the school and respond promptly.

WHEN SHOULD I GET A NOREP/PWN?

The school is required to send a NOREP/PWN to the parent any time the school is proposing *or* refusing to take action regarding a child's program or placement. For example, a school is required to send a NOREP/PWN to the parent if:

- the school wants to provide special education services to a child and implement an IEP for the first time (for this proposal, the school must have the parent's consent to provide services);
- the school wants to change the child's IEP or her placement (including when the school wants to change the child's placement for disciplinary reasons);
- the parent has requested an evaluation and the school refuses to evaluate the child;
- the parent has requested a change in the identification, program, or placement of the child, and the school refuses to make the change;
- the school no longer thinks the child needs special education;
- the school thinks the child should graduate from high school;
- the parent has requested an independent educational evaluation and the school refuses to pay for the evaluation; or

- the parent has revoked consent for the child to continue to receive special education services.

The NOREP/PWN should tell the parent:

- what action the school is proposing or refusing to take regarding the child;
- why the school is proposing or refusing to take the action;
- other options that the IEP Team considered and why those options were rejected;
- the basis for the school's proposal for the child or the school's refusal to take action; and
- the proposed educational placement for the child, including the amount of time during the school day that the child will receive special education (full-time, supplemental, itinerant) and the type or types of support (learning support, life skills support, emotional support, etc.).

WHAT SHOULD I DO WHEN MY SCHOOL GIVES ME A NOREP/PWN?

If you agree with the proposed IEP and placement, you should check "I approve the recommendation" on the NOREP. If the child will be receiving special education services *for the first time*, the school cannot start services without the parent's written agreement. That means, if you don't check the "I approve this recommendation" box and return the NOREP, special education services will not begin.

If the child is *already* receiving special education services and the school is proposing a change in the child's placement that the parent does not like, the parent must check the "I do not approve this recommendation" box on the NOREP and give it to the school district within **10 calendar days**. (If you lose the NOREP form, you can give the school district a letter saying that you do not agree with the school's proposal within the same time period. Keep a copy for your records.)

In addition, *if you want to stop the school from changing your child's placement while you challenge the new placement at a hearing*, you must also check the box requesting a "Due Process" hearing and follow through with the process for filing a

hearing complaint **OR** check the box requesting "mediation" and follow through with the process for requesting mediation. (See Chapter 12 of this Guide for the details.) You can choose the other option on the NOREP, a meeting to discuss the recommendation with the school, *but, unless you also properly request a hearing or mediation, the school will have the power to change your child's placement while the dispute is being resolved.* (For more information on each of the options listed on the NOREP, including how mediation and the special education hearing system works, see Chapter 12 of this Guide.)

If you miss the 10-day deadline for returning the NOREP and requesting a hearing or mediation, you can still challenge the proposed placement at mediation or at a hearing. *But, in the meantime, the school can move forward with its proposed change. For example, the school district can move your child from a learning support to an emotional support classroom, and your child will have to stay in the new placement until you get a decision in your favor from a special education appeal panel, or until you have successfully completed all steps in the hearing and appeal process.*

TIP: If you don't understand what is on the NOREP/PWN or what you should do with it, ASK for help! Ask someone from the school district to explain it to you, and/or call one of the resources for parents listed at the back of this Guide. Don't delay!

The Pennsylvania Department of Education has a sample annotated NOREP/PWN form with guidance and tips for the IEP Team and a list of additional resources for parents. The annotated NOREP/PWN can be found at: <http://www.pattan.net/files/Forms/English/NOREP-ANN070108.pdf>.

THE PROCEDURAL SAFEGUARDS NOTICE

Once a year, the school district or public charter school must provide you with a "Procedural Safeguards Notice" in your native language that lists and explains the child's and family's rights — including how to request mediation or a special education hearing, or how to file a complaint about a decision that the school has made. The school also has to give a family a copy of the Procedural

Safeguards Notice whenever the parent requests a copy, before an initial evaluation, and when a parent requests a special education hearing or files a complaint. Your school may offer you the option to get this and other Notices by e-mail, and may also post a copy of the Notice online.

This Notice is a long but important document. If you don't understand something in it, ask the school to explain it to you, or call one of the organizations listed in Appendix 10 of the *Guide*. A summary of the Procedural Safeguards Notice, called *Parents' Rights: Understanding the Procedural Safeguards Notice*, can be found at: <http://parent.pattan.net/files/Parent/ParentRights.pdf>.

CHAPTER 10

EXITING FROM A SPECIAL EDUCATION PROGRAM

CAN A CHILD EVER STOP RECEIVING SPECIAL EDUCATION SERVICES?

Yes! The goal of a special education program should be to support a child appropriately so that the child's weaknesses can be remedied to the point where the child no longer needs special help. Of course, some children will always require specially designed instruction, particularly children with significant disabilities that affect their learning. But others may be able to thrive without special instruction or with some minor adjustments or supports.

A child's IEP Team can decide that the child no longer requires special education services. For instance, a child who had been receiving services due to an emotional disability may have improved so much that the child no longer needs special supports in school. Or, a child may be learning at or above grade level and no longer requires special services (although it's important to note that a child is not ineligible for special education just because the child is passing from grade to grade).

A child becomes ineligible for special education if she graduates from high school or "ages out" (children with disabilities have the right to attend school and receive special services until the end of the school term in which they turn 21) - whichever comes first. For more information about high school graduation, see Chapter 11 of this Guide.

WHAT MUST THE SCHOOL DO BEFORE IT CAN END MY CHILD'S SPECIAL EDUCATION SERVICES?

The school must reevaluate the child before deciding that the child is no longer eligible for services. The school must then give you a Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN) that explains why the child will no longer receive services and on what information the school based this decision. On the NOREP/PWN, you must check whether you agree or disagree with this decision. If you disagree with the school's decision to

remove your child from special education, you can ask for mediation or a special education hearing to resolve the dispute. See Chapter 12 of this Guide for more information about dispute resolution options. If you do disagree and ask for mediation or a hearing, the child will remain in special education until the dispute is resolved.

CAN I TAKE MY CHILD OUT OF SPECIAL EDUCATION AND RETURN HER TO REGULAR EDUCATION?

Yes. If you decide you no longer want your child to receive special education services after those services have started, you can "revoke" (take back) your consent *in writing* for your child to get services. If you take back your consent, the school may no longer provide special education services to your child. Not even a Hearing Officer can order that your child receive special education services. Your child then will attend regular education classes. The school must give you written notice (a NOREP/PWN) before it stops giving your child special education services.

CHAPTER 11

HIGH SCHOOL GRADUATION and THE RIGHT TO A DIPLOMA

Children with disabilities have the right to stay in school through the school term in which they turn 21, or until they graduate (whichever comes first). The child's IEP Team decides whether she should graduate before she turns 21 or if she should stay in school until age 21. Graduation (the acceptance of a diploma) ends the child's right to attend public school.

Graduation is a **"change in placement"** that requires **prior written notice** (called a Notice of Recommended Educational Placement/Prior Written Notice) to the parents, and a **chance for the parents to disagree**. If school officials believe the child is ready to graduate, and the parents disagree, the parents can challenge the decision through the special education hearing process. The parents can also ask for mediation. (See Chapter 12 of this Guide for more information about the dispute resolution process.) In the meantime, the child remains eligible to attend school and to continue to receive the services in her IEP.

The school is not required to reevaluate a child before the child graduates. However, the school must give the child a written summary of her academic achievement and functional performance once the child graduates. The summary must include recommendations on how to help the child meet postsecondary goals (school, employment, community living - whatever is appropriate for the child). You can view PDE's annotated Summary of Academic Achievement and Functional Performance at: <http://www.pattan.net/files/Forms/English/SoP-ANN070108.pdf>.

All children with disabilities in Pennsylvania have the right to earn a regular high school diploma. Children can earn a diploma by completing the same courses and earning the same number of credits as regular education children. Or, a high school diploma can be awarded to a child with a disability who completes the special education program developed by the IEP Team.

Children with disabilities who will stay in high school beyond four years have the right to participate in graduation ceremonies with their graduating class and the right to "walk" at graduation. This is true even though they will not be awarded a diploma at that time and will continue to receive special education services.

CHAPTER 12

HOW TO RESOLVE SPECIAL EDUCATION DISPUTES

WHAT SHOULD I DO FIRST IF THINGS AREN'T WORKING FOR MY CHILD AT SCHOOL?

Parents sometimes disagree with the evaluation, Individualized Education Program (IEP), or placement the school offers their child. Other times, the parents agree at first, but after awhile change their minds because things just do not seem to be working. For example, your child may not be getting enough help to understand her class work, may still have serious behavior problems, or may not be learning enough in a life skills program. Here are some steps you can take if things aren't going well:

Talk with the child's teacher or other school staff by phone or in person. Ask if the teacher sees the same problems and can suggest any changes in the classroom that might help. Ask to see any assessments (tests) and copies of the child's work. Other things to ask: Are all of the services in the IEP being provided? Does the class have more children than state law permits? Are there some classes or times of day that seem harder for your child? Are the teaching strategies working for your child? Does your child need a "functional behavioral assessment" - an evaluation of the best ways of dealing with her behavior? Are there ways the family can help by working with the child at home?

Write to the principal and request an IEP Team meeting to discuss whether changes in the child's IEP would help. A *Sample Letter Requesting an IEP Team Meeting* can be found in Appendix 5 of this Guide. Often, it is helpful to have the district's Special Education Director at an IEP Team meeting because he should know what other help the district can offer your child. You can ask that the Special Education Director be invited to your meeting. At the IEP Team meeting, you can raise your concerns. You can also ask whether the IEP goals need to be changed; whether and why the child is making less progress than everyone

expected; whether more or different related services are needed; whether your child could spend more or all of her time in a regular education classroom if she had more supports; and any other questions you have about the child's IEP and placement.

When you meet with the school staff, here are some things to think about:

- If no one knows what to do differently, perhaps your child needs a reevaluation. An "instructional" evaluation may identify better strategies to help teach the child, and a "behavior assessment" can show what changes are needed to the behavior program. *Remember, all needed evaluations must be done without cost to the family.* (See Chapter 3 of this Guide for more information.)
- If you want a reevaluation, ask to sign the "Permission to Reevaluate-Consent Form" as soon as possible (at the meeting if possible). Remember, a school district has **60 calendar days** (minus the summer months) from the day you sign the Permission to Reevaluate-Consent Form to finish the reevaluation and give you the Report.
- If a reevaluation will be done, ask if the Team can agree to some short-term changes to the IEP in the meantime. A word of caution: The IEP is like a contract - the school only has to give your child what is written in the IEP. So, make sure the school writes the change into the IEP, and make sure that the IEP is clear that the change will only last until the results of the re-evaluation if that is what you want. (See Chapter 5 of this Guide for more information on IEPs.)
- If you think there will be problems at the IEP meeting, you may want to ask the school to agree to **IEP Facilitation**. IEP facilitators do not work for the school (they work for the Pennsylvania Office for Dispute Resolution, "ODR"). A facilitator can come to the meeting and help the school and family solve difficult problems. IEP facilitators are not Hearing Officers so they **CANNOT** order the school or parent to do

anything. But sometimes having a facilitator at the IEP meeting can lead to a good outcome. For more information on IEP Facilitation, check the ODR website at

→ <http://odr.pattan.net/earlydisputeresolution/IEPFacilitation.aspx> or call ODR at 1-800-222-3353.

WHAT IF I'VE FOLLOWED THESE SUGGESTIONS AND THERE ARE STILL PROBLEMS WITH MY CHILD'S IEP OR PLACEMENT?

If you still have not been able to reach an agreement with your school, your options include filing a complaint with the state's Bureau of Special Education (BSE), going to mediation, or requesting a due process hearing. Pre-hearing conferences are no longer available in Pennsylvania.

As explained below, which option you choose will depend on the kind of disagreement you are having with your school or charter school.

TYPES OF DISAGREEMENTS

For an overview of the different types of disagreements and the ways to resolve them, see the Chart on the back cover of this Guide entitled *Resolving Special Education Disagreements* at the back of this Guide.

- 1) **COMPLIANCE**: The school is not following some or all of your child's IEP or it is not following legal rules or required timelines. File a Complaint with the Bureau of Special Education. (see below)
- 2) **DISAGREEMENT OVER APPROPRIATENESS OF CHILD'S PROGRAM**: You and the school district can't agree on what should be in the IEP. For instance, you think your child needs three (3) sessions of physical therapy per week, and the school thinks only one (1) session is enough.
 - a. Request IEP Facilitation (explained above)
 - b. Request Mediation (see below)
 - c. Request a Special Education Hearing (also called a Due Process Hearing) (see below)

- 3) **DISCRIMINATION**: The school district is refusing to make a reasonable adjustment so that your child can participate in part of the school program or an extracurricular activity. For instance, the school is telling you that a child in a wheelchair cannot go on the class field trip because the school doesn't have a lift van. File a complaint with the Bureau of Special Education, the Office for Civil Rights, or the Pennsylvania Human Relations Commission. (explained below)

WHEN SHOULD I FILE A COMPLAINT WITH THE BUREAU OF SPECIAL EDUCATION?

A parent should file a complaint with the state's Bureau of Special Education (BSE) if she believes the school is not following her child's IEP or the school is not following the laws or required timelines, or is discriminating against her child because of her child's disability. You can only complain about things that happened within the past calendar year. (So if it is December 2, 2008 you can only complain about things that happened after December 2, 2007). Advocates and advocacy organizations can also file complaints with the state, either about a specific child or about a districtwide or statewide problem. You can even file a complaint against the state.

A parent should ***not*** file a complaint with the BSE about any of the following issues: (1) the school's decision that the child is (or is not) eligible for special education, (2) the amount or type of services the school offers in an IEP, (3) the placement the school offers to a child. For example: if you believe your child needs one hour a week of physical therapy, but the school is only offering an IEP with one hour a month, this is not an issue for a BSE complaint. Why? The Bureau of Special Education will not decide whether an IEP is appropriate - you will have to ask for mediation or a special education hearing to settle "factual" questions.

Parents can also call the BSE's Special Education ConsultLine at 1-800-879-2301 if they have questions about special education law or their child's IEP. The ConsultLine also helps parents with filing complaints, and may refer the parent to outside agencies for more help.

HOW DO I FILE A COMPLAINT WITH THE BUREAU OF SPECIAL EDUCATION?

To file a complaint with the BSE, you can fill out the "Complaint Form" that is found at the following website:

http://odr.pattan.net/files/odr/complaint_form_111606_eng.pdf. Or, if you don't want to use that form, you can send a letter to the BSE.

Either way, the following information must be in the complaint:

1. The child's name, school, and home address (or contact information if the child is homeless).
2. A statement that the school (or the state) has broken a special education law.

For example: "The school has not followed the law because it took more than 60 calendar days to evaluate my son" or "I believe the school broke the law because it isn't giving my daughter the two hours of speech therapy a week that is written in her IEP."

3. Any facts you know about the problem.

For example: "The speech therapist quit in September and my daughter has not had any therapy even though it is written in her IEP."

4. A proposed solution to the problem (if you can think of one). If you want the school to **make up for services** the child missed, you should ask for "**compensatory education services.**" Or, you may want to ask the school to **reimburse you** (pay you back) for services you think the school should have provided.

For example: "I would like the BSE to make the school contract with a new speech therapist immediately and I want compensatory education services (make up services) for the speech therapy that my daughter missed."

5. Your contact information and signature.

You should attach copies of any papers that help explain your problem, such as a copy of your child's IEP, to the complaint form or letter.

Complaints should be sent to:

Pennsylvania Department of Education
Bureau of Special Education
Division of Compliance, Monitoring and Planning
333 Market Street, 7th Floor
Harrisburg, PA 17126-0333

***You must also send a copy of the complaint to the school.

We recommend that you send the copy to the school district's or charter school's
Director of Special Education.***

Make sure to keep a copy of the complaint you send for your records.

The Bureau of Special Education has **60 calendar days** to investigate your complaint and issue a report. If the school and parents agree, they can use mediation to solve the complaint (but the BSE must still give a report in **60 calendar days** unless you agree to give it more time). As part of the investigation, you can give the BSE additional information by phone or in writing. The school will also be given a chance to explain itself and to offer a solution to the problem. If the BSE report says that the school broke the law, it must tell the school what it has to do to correct the problem (called "Corrective Action"). The BSE must follow up to ensure that the school completes all of the "corrective action."

If the parent is not satisfied with the outcome of the complaint, the parent may go to a due process hearing.

WHEN SHOULD I USE MEDIATION?

Mediation is free and voluntary (this means that both the school and the parent have to agree to use mediation or it will not take place). It can be a quick and informal way to resolve disputes.

A "mediator" is assigned by the state Office for Dispute Resolution (ODR) — this person does not work for the school and is trained to help people reach agreements. A mediation session usually will be scheduled within seven to ten days of your request. The mediation session must be held at a place that is convenient to you. All discussions at mediation sessions are confidential (private) and cannot be used by the school or the parent in any future special education hearings or court cases. So, you should not worry about saying "the wrong thing" at the session.

The mediator usually will meet with each side separately, and then both sides together, to help solve the problem. Neither the school nor the parent can bring their lawyer to the session, but the school must send someone who has the power to make decisions for the school. If the school and parent reach an agreement, it must be put in writing and signed by the parties. If the agreement requires a change in the child's IEP, the school or school district should hold an IEP meeting to make the changes to the IEP. If the school signs the agreement but doesn't follow it, you can file a complaint with the BSE to enforce the IEP, or go to court to enforce the agreement. For more information on mediation, see the ODR website at <http://odr.pattan.net/>.

If you would like to use mediation, you can download and fill out the mediation request form: http://odr.pattan.net/files/odr/mediation_request.pdf. If you do not have access to a computer or the internet, call 1-800-222-3353 to reach ODR. You can also start mediation by checking the "box" for mediation on a NOREP and then contacting ODR.

WHEN SHOULD I ASK FOR A SPECIAL EDUCATION HEARING (ALSO CALLED A "DUE PROCESS HEARING")?

A parent can request a special education hearing to resolve disputes about whether a child is receiving a free appropriate public education in the least restrictive environment, whether the school district should pay for an Independent Educational Evaluation, and more - pretty much any disagreement between the parents and the school district can be the subject of a special education hearing. The most common topics are the appropriateness of a child's program or placement. Sometimes the school is the one who requests a hearing (for example, if the school wants to deny your request for an independent evaluation). Almost all of the rules that apply when a parent requests a hearing also apply when a school requests a hearing.

How do I request a hearing?

To request a hearing, you can check the "Due Process Hearing" box on a NOREP. But that is not enough. You must also send a letter, called a "complaint," to the school that includes certain information (you can attach this letter to the NOREP when you send it back to the school). You must also mail a copy of the "complaint" letter to Pennsylvania's Office for Dispute Resolution at: 6340 Flank Drive, Suite 600, Harrisburg, PA 17112-2764. ODR's fax number is 717-657-5983, and the e-mail address is odr@pattan.net.

A Sample Letter Requesting a Special Education Due Process Hearing can be found in Appendix 6 of this Guide. ODR also has a "Due Process Complaint Notice" available at its website at <http://odr.pattan.net/files/ODR/dpcomplaintnotice.pdf>. ODR's "Due Process Complaint Notice," however, asks the person completing the notice to provide more information than is actually required by special education law (for example, the law does not require the notice to contain the name of the Superintendent/CEO, or the name and address of the LEA contact). If you are using ODR's form to ask for a hearing, just fill out the contact information for the school to the best of your ability. The most important sections of the "complaint" are discussed below.

You can request a hearing even when you have not been given a NOREP by

the school - just write the "complaint" letter and mail it to both the school and to ODR.

What information must a special education hearing request contain?

A special education hearing request or "complaint" letter must contain the following information (in as much detail as possible):

1. The child's name, school, and home address (or contact information if the child is homeless);
2. An explanation of the problem(s); and

For example: "The school wants my son to stay in his emotional support class, but for the last two years he has been in that class and getting bad grades because he is bored. His therapist says he would do better in a regular classroom where the school work is more challenging if he had some extra support, such as help from an itinerant teacher. The school district wouldn't change his class or provide the extra help, so I am now asking for a hearing."

3. When possible, any suggestions you have for solving the problems. Remember to include a request for **compensatory education**, if appropriate. Compensatory education is make-up services for your child for services missed or inappropriate services from the school. See ELC's fact sheet entitled *When Is Your Child with a Disability Entitled to Compensatory Education Because the School District Has Violated Her Rights?* at www.elc-pa.org.

For example: "I would like my daughter to be moved to a regular education classroom with supports and given compensatory education for the time she spent in the inappropriate emotional support classroom."

If the school thinks the parent's "complaint" letter is missing some of the required information, it has **15 calendar days** to tell a Hearing Officer that it thinks the request is "insufficient." If this happens, the Hearing Officer has **five**

calendar days to make a decision and notify the parties in writing. If the Hearing Officer rules that a request is "insufficient," the hearing will not be scheduled. At that point, you can either "amend" your request to add the missing information (see below) or you can start over by writing a new "complaint" letter and sending it to the school and to ODR.

TIP: Before you ask for a hearing in your "complaint" letter, think carefully about the problems that you want the Hearing Officer to decide. The Hearing Officer is only allowed to decide issues that you include in your "complaint" letter - if you forget something you cannot bring it up later on unless the Hearing Officer or the school allows you to "amend" your request (see below).

Is there a deadline for requesting a hearing?

A parent must request a hearing within **two (2) years** of the date that the parent knew (or should have known) about the problems listed in the complaint. The only **exceptions** to this rule are: 1) when the parent was prevented from requesting a hearing because the school specifically misrepresented that the problem was solved, or 2) because the school did not give the parent information about the problem that it was required to provide under the law. For example, if you want a hearing because you think the school should not have stopped giving your child speech therapy, you must file the complaint within two years of receiving the IEP and NOREP that no longer include speech therapy. But, you might be excused for waiting longer than two years if the school falsely told you that your child was receiving speech therapy.

TIP: If the problems have been going on for more than two years, you can still request a hearing but the award you will be given (if you win) will be limited to the two-year period unless you meet one of the exceptions.

Example: You might only win two years of compensatory education if you knew or should have known that your child was not getting help with her reading disability and you waited three years to ask for a hearing.

Can I change my hearing request?

A parent can "amend" a hearing request if one of two things happens: (1) the school agrees to your amendment, or (2) if the Hearing Officer agrees to let you amend the complaint more than **five calendar days** before the hearing was scheduled to start. But, if you amend your complaint, the timeline and other requirements for a hearing start over again - which is why it is important to get it right the first time if at all possible.

Does the school have to reply to my hearing request?

If the school has not already given you a NOREP that explains its reasons for each of the actions that you are complaining about in your hearing request, it must send you either a NOREP or a written response to the issues you have raised within **10 calendar days** of receiving the "complaint" letter. If the school already gave you a NOREP that covers all the issues, it doesn't have to send you a new NOREP.

What happens after the hearing request and the school district's response?

Within **15 calendar days** of receiving the "complaint" letter, the school must schedule a "**resolution session**." If you have already had a mediation session about the issues in the "complaint" letter, you can skip the resolution session. Or, the parent and the school can agree in writing to skip the resolution session.

A resolution session is a meeting with the parent and any IEP Team members who have knowledge of the facts in the hearing request. The family can bring an advocate or a lawyer to the meeting. If you do not bring a lawyer, the school can't bring its lawyer. The school must send someone to the meeting who has decision-making authority. Any agreement reached at the meeting must be put in writing and signed by the parties. After the meeting, the parent and school have **three business days** to change their minds and cancel the agreement. Make sure that the agreement is included in your child's IEP. Then, if the school doesn't follow the IEP, you can file a complaint with the BSE. You can also go to court to ask a judge to force them to follow the agreement. For more information about resolution sessions, including how to prepare for one, see *Resolution Meetings: A Guide for Parents and Educators* at

<http://odr.pattan.net/files/ODR/ResolutnMtgs011608.pdf>.

When does the hearing begin?

The resolution session and mediation are designed to help the parties avoid a hearing. If the problem is not resolved, the hearing can be scheduled if:

- It has been **30 calendar days** after the school received the parent's "complaint" letter and the parent went to a resolution session or to mediation and doesn't think the problem was fixed. However, the parties do not have to wait for the 30 day period to end if the parties have agreed in writing to waive or end the resolution session or mediation. The parties can also waive the 30 day limit in writing and complete mediation.
- It has been **15 calendar days** since the school received the parent's "complaint" letter and the school has not scheduled (or has failed to show up at) a resolution session, then the parent can ask the Hearing Officer to schedule the hearing.

However, the hearing will not start if the parent skips a resolution session (but the school does need to try to schedule the session at a mutually agreeable time). In fact, if the school can show that the parent hasn't cooperated in scheduling the resolution session or has failed to go to the session, the school can ask the Hearing Officer to dismiss the complaint. If this happens, you will have to start the hearing process over with a new "complaint" letter (which will limit the parents' ability to get compensatory education or reimbursement to two (2) years from the new complaint).

What rules apply at the hearing?

The family (and the school) has the right to bring a lawyer to the hearing. However, if you cannot afford an attorney, you do not have the right to have one provided for you. You do not need to have a lawyer to go to a hearing, though. You can represent yourself. This is called proceeding *pro se*. The school will almost always be represented by a lawyer at a hearing. The family may also bring non-lawyers who have special knowledge or training about the problems of children with disabilities with them to consult. The family must be given access to their child's school records before the hearing. The family (or the school) may ask the Hearing Officer to order (subpoena) a person to attend the hearing as a witness.

Five (5) business days before the hearing, the family and school must exchange a list of all documents and witnesses that they want to use at the hearing. The school and family must also give each other copies of any evaluation reports that will be shown to the Hearing Officer at the hearing. If you don't follow this rule, the Hearing Officer can stop you from using the documents or witnesses at the hearing.

TIP: If you want to ask questions of a school employee at the hearing, and they aren't on the school's witness list, ask the Hearing Officer before the hearing begins to order that person to come to the hearing and testify. The Hearing Officer has the authority to issue a "subpoena" to that person requiring them to testify at the hearing.

What happens at the hearing?

The case will be decided by one of five full-time Hearing Officers employed by the BSE. A list of all Pennsylvania Hearing Officers is at <http://odr.pattan.net/files/odr/honames.pdf>. At the hearing, the family will have a chance to explain the child's situation to the Hearing Officer, to present witnesses and experts, and to question the school's witnesses. The parent will want to show why the school's current or proposed evaluation, IEP, or placement of the child is not appropriate. You should also show why the evaluation, IEP, or placement that you want would be appropriate.

For example, you may want to show the Hearing Officer copies of your child's current and past IEPs and past report cards/progress reports to show that the IEP hasn't changed over that time and that your child has not made much progress. The parent may also want to use an outside "expert," like a therapist or certified school psychologist, to discuss what's wrong with the current IEP and what improvements are needed. The school will then have a turn to show the Hearing Officer documents and to present witnesses. Each side gets to "cross-examine" (ask questions) of the other side's witnesses.

Much more information about the procedures used during a hearing can be found in *Pennsylvania's Special Education Dispute Resolution Manual* (formerly

known as the Hearing Officer Handbook) put out by ODR. This manual can be found at: http://odr.pattan.net/files/ODR/SEDR_Man.pdf.

TIP: If you have had an independent evaluation of your child, it would help a lot if the expert who evaluated your child would come to the hearing. Unfortunately, while the school *may* have to pay for the evaluation. (See Chapter 4 of this Guide.) the school will *not* have to pay for the expert to come to the hearing. If you can't afford to pay the expert to come to the hearing, you can still bring the expert's report and show it to the Hearing Officer.

How long does it take to finish the hearing and get a decision?

Once the timeline for scheduling the hearing begins, the Hearing Officer must make a written decision based on the hearing within **45 calendar days**. If there are a lot of witnesses, it can sometimes take a couple of days to finish a hearing. The Hearing Officer can extend (or refuse to extend) the 45 day rule if you or the school ask him to.

Once the Hearing Officer makes his decision, the school must either appeal or follow the decision. If the school does not appeal and doesn't follow the decision, then you can enforce the decision by filing a complaint with the Bureau of Special Education or by going to court.

Copies of Hearing Officer's decisions can be found on ODR's website at: <http://odr.pattan.net/dueprocess/HearingOfficerDecisions1.aspx>.

TIP: If you settle the dispute with the school before the hearing, you can ask the Hearing Officer to put the settlement "on the record." But neither the Hearing Officer nor the Bureau of Special Education will enforce settlements. The only way to enforce a settlement is by going to court. You will also lose your chance to have the school pay for your lawyer's fees by settling unless the school agrees to pay the fees as part of the settlement.

Can the Hearing Officer's decision be appealed?

The Hearing Officer's decision can be appealed by the parents or the school (or both) in state or federal court within **90 calendar days** of receiving the decision. There is no longer an Appeals Panel to hear appeals of due process hearings in Pennsylvania, except for cases in which the due process hearing was requested before June 15, 2008.

Who pays for the family's attorney?

Remember, you do not have to hire an attorney; you can go to the hearing by yourself. While it may seem scary to go to a hearing without a lawyer, ask yourself what you have to lose. You might win some of what you want (or even all of what you want). Even if you lose, you will know that you've given it your best shot. Parents who go without a lawyer have a better chance of succeeding if they pick just one or two issues (like trying to get an extra session of Occupational Therapy or Physical Therapy) and make the hearing as uncomplicated as possible.

If you do hire an attorney and you win the case, the school may be forced to pay some or all of your attorney's fees. The payment of attorney's fees can be part of a settlement agreement with the school, or you can file a case in court to get the fees paid if a hearing officer has ruled in your favor. Schools do not have to pay for your lawyer to go to an IEP meeting unless the meeting has been ordered by a Hearing Officer. The school also doesn't have to pay for your attorney to attend a resolution session.

In very limited circumstances, a school can ask a court to order that a parent or parent's attorney pay the school's attorney fees. This would only happen if a parent asked for a hearing for an improper purpose, such as to harass the school.

A Hearing Officer or a court can no longer order a school to pay for the costs of any experts used by parents at the hearing.

CLAIMS OF DISCRIMINATION

If you believe that the school is discriminating against your child because of

your child's disability (for example, not allowing the child to participate in field trips or the school marching band), you can also file a complaint with the Bureau of Special Education (the process for which is explained above), the U.S. Department of Education's Office for Civil Rights (OCR) or the Pennsylvania Human Relations Commission (PHRC). More information about such complaints may be found at:

- <http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>
- http://sites.state.pa.us/PA_Exec/PHRC/education/education_home.html.

You can also ask for a special education hearing to resolve an issue of disability-related discrimination. You can ask a Hearing Officer to order the district to provide your child with the necessary accommodations so she can participate in an activity or program. In some situations, you might also be able to go directly to court to ask a judge to order the school to stop its discriminatory practice(s).

CHAPTER 13

SPECIAL RULES FOR PRESCHOOL CHILDREN

Federal and state law requires that free appropriate preschool programs be provided to all children with disabilities or developmental delays age three (3) to school-age who need specialized instruction. These programs are called **early intervention** (EI). In most areas of the state, early intervention programs usually are provided through intermediate units (IUs), rather than local school districts. In Philadelphia and Chester, Elwyn, a private company, provides early intervention services to preschoolers. Many IUs and Elwyn contract with private early intervention providers to provide some or all services to preschoolers.

Most of the rules that apply to school-age children with disabilities also apply to preschoolers. For example, schools have a Child Find duty to locate and identify preschoolers who are eligible for special education. Preschool children with disabilities who are eligible for special education are entitled to a free appropriate public education in the least restrictive environment (although implementing that requirement can be tricky if there is no regular preschool or other public early childhood program available). However, there are some differences between the rules for preschoolers and school-age children with disabilities.

EVALUATIONS

An evaluation of a preschooler must look at the child's developmental levels and physical development to determine if the child has a disability or is developmentally delayed. Although a certified school psychologist is required to be part of the evaluation team for school-aged children with certain disabilities such as autism and mental retardation, this is not required for preschool evaluations. Usually, an evaluation team for a preschooler includes a special education teacher and a variety of therapists (like an Occupational Therapist, Physical Therapist, or a speech therapist). The evaluation (and any reevaluation) must be completed and a report issued within **60 calendar days** (including the summer months) after a

parent gives written consent. Preschoolers must be reevaluated every **two years**. A sample annotated Evaluation Report form for preschoolers can be found at: <http://www.pattan.net/files/Forms/English/EI/ER-Ann060908.pdf>.

IEP PROCESS

The IEP Team for a preschooler should include a special education teacher and a representative of the EI provider who is familiar with the provider's available resources and who can provide or supervise special instruction for the child. If the parent agrees, the IEP must include services to help the family support the child's development. The IEP developed by the Team must be implemented by the school within **14 calendar days** (instead of 10 school days for school-aged children). **One year** before a preschooler starts kindergarten, the IEP Team should write goals and objectives in the IEP to help the preschooler make the transition to elementary school. A sample annotated IEP for a preschooler can be found at:

<http://www.pattan.net/files/Forms/English/EI/IFSP-IEP-Ann070108.pdf>. This is also the same form used for Individualized Family Service Plans, which are the plans for children in the birth to three (3) early intervention system. For more information on the rules for the youngest children, see ELC's manual, [*The Right to Early Intervention for Infants and Toddlers and Their Families in Pennsylvania: A Handbook for Parents \(2008 edition\)*](#).

PLACEMENTS FOR PRESCHOOLERS

Placements for preschoolers include:

- Regular neighborhood preschool programs
- Special education preschool programs run by the EI provider
- The child's home
- Community settings
- Private schools, residential programs, or hospitals

The IEP Team must choose a placement that is appropriate for the preschooler and that is in the least restrictive environment. The EI provider must provide supplementary aids and services to the preschooler in that placement just as the school district is required to do for a school-aged child placed in a regular

classroom.

The most likely way for a preschooler with a disability to get a free appropriate education **in the least restrictive environment** is for the EI provider to provide the EI services in a public preschool program like a pre-kindergarten or Head Start program. If no such option is available (and the EI provider is not required to create a regular preschool program), the EI provider may be required to pay for the child to attend a licensed private preschool within a reasonable distance (if there is one). If the child needs only some preschool services, such as speech therapy or physical therapy or consultation with the regular preschool teacher, the EI provider can provide those services at the child's home, a day care center, or a private preschool (the parent must pay for the preschool program, but not the therapy services).

EXITING FROM EARLY INTERVENTION

A child is no longer eligible for early intervention when:

- The child enrolls in a public kindergarten;
- The child is old enough to go to school in the first grade (no later than age six at the beginning of the school year);
- The child has no developmental delay for four months; or
- The parent removes the child from the program. EI is voluntary; parents can choose to send their child to an EI program or not, and can withdraw the child at any time).

CASELOADS FOR PRESCHOOL TEACHERS AND THERAPISTS

State law limits the number of preschoolers on teachers' and therapists' caseloads depending on the requirements of each child's IEP. Teachers who go into regular preschools to provide support to preschoolers with disabilities may have between 20 and 40 children on their caseloads. Teachers who teach preschoolers in special education classrooms may have 6 to 11 children if there is another teacher or paraprofessional in the class. Speech therapists may have 25 to 50 children on their caseloads.

RESOLVING DISPUTES

If a parent believes that the EI provider is not complying with the preschooler's IEP or with specific legal requirements, the parent can file a complaint with the:

Bureau of Early Intervention Services
Office of Child Development and Early Learning
Departments of Education and Public Welfare
PDE Building , 6th Floor,
333 Market Street
Harrisburg, Pa 17126-0333.

The Bureau will investigate the complaint just like a complaint to the Bureau of Special Education (explained in Chapter 12 of this Guide). Parents of preschoolers also have other methods of resolving disputes discussed in that chapter, such as mediation and a special education hearing.

APPENDIX

APPENDIX 1

DEFINITIONS OF RECOGNIZED DISABILITIES

From 34 Code of Federal Regulations (C.F.R.) Section 300.8 (34 C.F.R. § 300.8):

Section 300.8 Child with a disability.

(a) General. (1) Child with a disability means a child evaluated in accordance with Sec. Sec. 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under Sec. Sec. 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with Sec. 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in Sec. 300.111(b), include a child--

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

(1)(i) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) **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.

(3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(4)(i) **Emotional disturbance** 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:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.
- (5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
- (6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.
- (7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness or mental retardation-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.
- (8) **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).
- (9) **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--
 - (i) 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; and
 - (ii) Adversely affects a child's educational performance.
- (10) **Specific learning disability**--(i) General. 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.
 - (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.
- (11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.
- (12) **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 a child's educational performance. Traumatic brain injury 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. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
- (13) **Visual impairment** including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

APPENDIX 2
SAMPLE LETTER REQUESTING AN INITIAL SPECIAL
EDUCATION EVALUATION

Your Address

Your Phone Number

Date

Principal's Name

Name of Your Child's School

School Address

Dear Principal:

I am the parent of _____, whose date of birth is _____.

My child has not been doing well in school and I am therefore requesting a comprehensive evaluation to determine whether my child needs special education services, and, if so, what services are needed.

I would like to participate with the school staff to decide what testing is needed and what information about my child should be collected. I'd also like to know when the testing (if any) will be done, and whether any meetings will be scheduled so that I can attend.

I understand that the evaluation must be completed, and a written report given to me, within **60 calendar days** (not including the summer months) of the school district's receipt of the **Permission to Evaluate-Consent Form** signed by me. Please send me a **Permission to Evaluate-Consent Form** to sign as soon as possible so that we can begin the process. [Or, I'd like to come to the school and sign the form immediately.]

Should you have any questions or problems with this request, please contact me at the following number(s) _____ or by e-mail at _____.

Thank you.

Sincerely,
Your Name

cc: Director of Special Education

KEEP A COPY OF THIS LETTER FOR YOUR RECORDS. WE RECOMMEND THAT YOU HAND-DELIVER THIS LETTER TO THE PRINCIPAL AND MAKE SURE SOMEONE SIGNS FOR IT, OR THAT YOU SEND IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. YOU SHOULD ALSO SEND A COPY OF IT TO YOUR SCHOOL DISTRICT'S OR CHARTER SCHOOL'S SPECIAL EDUCATION DIRECTOR.

APPENDIX 3 SAMPLE LETTER REQUESTING A REEVALUATION

Your Address

Your Phone Number

Date

Principal's Name

Name of Your Child's School

School Address

Dear Principal:

I am the parent of _____, whose date of birth is _____.

I feel that my child is not making progress in his/her special education program. I am particularly concerned about the area(s) of _____. In order to better understand the problem and the type and amount of services that may be needed, I am requesting that my child be reevaluated.

I would like to participate with the rest of the IEP Team in the review to determine what data and testing is needed. I'd also like to know when the testing will be held and whether any meetings will be scheduled so that I can attend.

I understand that the reevaluation must be completed, and the written Reevaluation Report given to me, within **60 calendar days** (not including the summer months) of your receipt of the **Permission to Reevaluate-Consent Form** signed by me. Please send me a Permission to Reevaluate-Consent Form to sign as soon as possible so that we can begin the process. [Or, I'd like to come to the school and sign the form immediately.]

Should you have any questions or problems with this request, please contact me at the following number(s) _____ or by e-mail at _____.

Thank you.

Sincerely,

Your Name

Cc: Director of Special Education

KEEP A COPY OF THIS LETTER FOR YOUR RECORDS. WE RECOMMEND THAT YOU HAND-DELIVER THIS LETTER TO THE PRINCIPAL AND MAKE SURE SOMEONE SIGNS FOR IT, OR THAT YOU SEND IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. YOU SHOULD ALSO SEND A COPY OF IT TO YOUR SCHOOL DISTRICT'S OR CHARTER SCHOOL'S SPECIAL EDUCATION DIRECTOR.

APPENDIX 4
SAMPLE LETTER REQUESTING AN
INDEPENDENT EDUCATIONAL EVALUATION

Your Address
Your Phone Number

Date

Principal's Name
Name of Your Child's School
School's Address

Dear Principal:

I am the parent of _____, whose date of birth is _____.

I am requesting that the school district agree to pay for an independent educational evaluation of my child for the following reasons. [Although not required, we recommend that you tell the district why you do not think that the district's evaluation is appropriate.]

The type of independent evaluation that is needed is: _____.
[For example, an evaluation by an independent certified psychologist, or an evaluation by a speech therapist.]

Please forward to me the criteria that the school district uses to select its evaluators for this type of evaluation. I would also appreciate a list of the evaluators that are available (although I understand that I can pick someone else in this area who meets the school district's criteria even if that person is not on the list).

Please contact me at your earliest convenience to let me know whether the school district will pay for this independent evaluation. I understand that if the school district turns down my request, it must immediately arrange for a Special Education Hearing. If you choose to pursue a Hearing, please notify me when the school district will file a complaint with the Office for Dispute Resolution requesting that a Hearing be scheduled, and when the resolution session will be convened. *[Note: A parent can also request that the public charter school or school district participate in a mediation session to resolve the dispute. If you mediate the dispute, and it doesn't work out, you can still have a Hearing, and you don't have to also have a resolution session.]*

Should you have any questions or problems with this request, please contact me at the following number(s) _____ or by e-mail at _____.

Thank you.

Sincerely,
Your Name

Cc: Director of Special Education

KEEP A COPY OF THIS LETTER FOR YOUR RECORDS. WE RECOMMEND THAT YOU HAND-DELIVER THIS LETTER TO THE PRINCIPAL AND MAKE SURE SOMEONE SIGNS FOR IT, OR THAT YOU SEND IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. YOU SHOULD ALSO SEND A COPY OF IT TO YOUR SCHOOL DISTRICT'S OR CHARTER SCHOOL'S SPECIAL EDUCATION DIRECTOR.

APPENDIX 5

SAMPLE LETTER REQUESTING AN IEP TEAM MEETING

Your Address
Your Phone Number

Date

Principal's Name
Name of Your Child's School
School's Address

Dear Principal:

I am the parent of _____, whose date of birth is _____.

Please schedule an IEP Team meeting as soon as possible to discuss my child's IEP. I am asking for an IEP Team meeting because I have some concerns about _____. [*Explain why you want the meeting.*]

In addition to the people who are required under law to attend the IEP Team meeting, I would like the following people to be present at the IEP Team meeting: _____.
[*While the law requires certain people to participate in an IEP Team meeting, if there are specific teachers, therapists, or other school personnel you think are crucial to the meeting, you should list those people.*]

I will be bringing the following people with me to the meeting: _____.
[*It is good practice to let the school know if you will be bringing an advocate or someone else with you.*]

I am available on the following dates for a meeting: _____.

Should you have any questions or problems with this request, please contact me at the following number(s) _____ or by e-mail at _____.

Thank you.

Sincerely,
Your Name

Cc: Director of Special Education

KEEP A COPY OF THIS LETTER FOR YOUR RECORDS. WE RECOMMEND THAT YOU HAND-DELIVER THIS LETTER TO THE PRINCIPAL AND MAKE SURE SOMEONE SIGNS FOR IT, OR THAT YOU SEND IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. YOU SHOULD ALSO SEND A COPY OF IT TO YOUR SCHOOL DISTRICT'S OR CHARTER SCHOOL'S SPECIAL EDUCATION DIRECTOR.

APPENDIX 6
SAMPLE LETTER REQUESTING
A SPECIAL EDUCATION DUE PROCESS HEARING

Your Address
Your Phone Number

Date

Director of Special Education
Director of Special Education's Mailing Address

Dear Director of Special Education:

I am the parent of _____, whose date of birth is _____. My child is a student in the _____ grade and attends [include name of school].

I hereby request a Special Education Due Process Hearing because of my concerns about my child's Individualized Education Program (or evaluation, placement, or other issue). In order to complete my request, I am providing the following information:

1. **My child and I live at** [if your child lives at a different address, include the child's address also; if you are homeless, provide any contact information that is available]:

_____.

2. **My reasons for disapproving the school district's recommendation [or for requesting something that the school district rejected] are** [list all of the problems that you would like the Hearing Officer to resolve. Remember, it is hard to add problems later, so make sure you include all of your concerns. Be sure to include all facts that explain the problems - see example below.]:

_____.

(For example: I am rejecting the offered IEP for my daughter because it proposes a separate special education classroom. I believe that my daughter can succeed educationally if she is placed in a regular classroom with supports. My daughter had a successful experience in a regular preschool. She needs to learn to speak and behave like other children of her age, and attending class with children who do not have disabilities will help. My daughter also needs speech therapy, and the school district won't agree to provide it, etc.)

3. **My proposed solution(s) to the problem(s) are** [If you have a proposed solution list it here, or say that you don't know how to fix the current problem. Make sure that you state if you are asking for reimbursement or compensatory education to make up for past problems. In

general, you can go back two (2) years from your Hearing request.]:

(For example: I think my daughter would do well in a regular first grade class if she had an aide to help with recess, and a special education teacher to help her with math and to help her teacher change the curriculum to take account of her learning needs and levels. My daughter also needs two hours per week of speech therapy. I am also asking for extra speech therapy to make up for what my daughter has already missed for the entire school year so far.)

I am requesting that the Hearing be Open/Closed and held during the Day/Evening.

I would appreciate receiving copies of all my child's records as soon as possible, but in any case prior to the Hearing.

Thank you.

Sincerely

Your Name

cc: Office for Dispute Resolution,
6340 Flank Drive, Suite 600
Harrisburg, PA 17112-2764

IMPORTANT NOTE:

BEFORE MAKING A REQUEST FOR A SPECIAL EDUCATION HEARING, PLEASE REVIEW THE SECTION OF THIS GUIDE CALLED *RESOLVING SPECIAL EDUCATION DISPUTES*. THAT SECTION EXPLAINS YOUR OPTIONS WHEN YOU DISAGREE WITH THE DECISION OF A SCHOOL DISTRICT OR A PUBLIC CHARTER SCHOOL. YOU CAN USE THIS LETTER TO ASK FOR A SPECIAL EDUCATION HEARING AT ANY TIME. OFTEN A FAMILY MAKES A REQUEST FOR A HEARING BY DISAPPROVING A SCHOOL PROPOSAL ON A NOTICE OF RECOMMENDED EDUCATIONAL PLACEMENT/PRIOR WRITTEN NOTICE (NOREP/PWN) AND CHECKING THE BOX FOR A DUE PROCESS HEARING. IF YOU REQUEST A HEARING ON THE NOREP/PWN, YOU MAY NOT HAVE PROVIDED ALL OF THE INFORMATION REQUIRED FOR A HEARING REQUEST. THEREFORE, YOU MUST ALSO SEND THE SCHOOL DISTRICT THIS LETTER OR YOU MUST COMPLETE THE DUE PROCESS COMPLAINT NOTICE MADE AVAILABLE BY THE OFFICE FOR DISPUTE RESOLUTION (ODR). FOR A COPY OF ODR'S DUE PROCESS COMPLAINT NOTICE, GO TO <http://odr.pattan.net/files/odr/dpcomplaintnotice.pdf>. PLEASE NOTE THAT ODR'S COMPLAINT NOTICE ASKS FOR MORE INFORMATION THAN IS REQUIRED BY LAW TO BE INCLUDED IN A DUE PROCESS COMPLAINT NOTICE. THIS SAMPLE LETTER PROVIDES JUST THE INFORMATION THAT IS LEGALLY REQUIRED TO BE IN A NOTICE. MAKE SURE THAT YOU SEND A COPY OF THE COMPLETED LETTER OR COMPLAINT NOTICE TO THE OFFICE FOR DISPUTE RESOLUTION. KEEP A COPY FOR YOUR RECORDS.

APPENDIX 7

Complaint Form

Please feel free to make copies of this form, use additional paper, or call the ConsultLine at 1-800-879-2301 or the Bureau of Special Education (BSE) at 717-783-6913 for additional copies.

My preferred method of contact by the Adviser assigned to this complaint would be:

- By phone (Number) _____
Best time during normal business hours to call _____.
- In person at a public facility during normal business hours. The location would probably be a school or Intermediate Unit building to permit duplication of documents.

Are you filing this complaint on behalf of a specific child? Yes _____ No _____

Please provide your contact information, relationship to child, and signature.

Name: _____

Address: _____

Phone Number: _____
Home Work Cell

Relationship to child or children:

Parent Attorney Advocate Other

Signature

Date

***NOTE: THIS MUST BE SIGNED FOR BSE TO INVESTIGATE.**

The name and address of the residence of the child, school, and school district.

Child's Name: _____

Date of Birth: _____

Address: _____

Is the child currently in school? Yes _____ No _____

If so, where is the child's current program?

School/School District: _____

Complete only if the complaint is filed on behalf of a homeless child or youth.

Contact Person

Telephone Number

Did the violation occur within the past year? If so, on or about what date?

Date

To clarify my allegations, I would like the Adviser to interview the following person(s).

| Name | Occupation/Title | Phone Number/E-Mail Address |
|------|------------------|-----------------------------|
| | | |
| | | |
| | | |

Please provide a statement about the violation or issue, which you believe has occurred. Please include a description about the nature of the problem.

Please list the facts that support your statement.

To the best of your knowledge, please suggest a solution to this problem.

You must send a copy of this complaint to the LEA. By signing below, you indicate to BSE that you have provided a copy of the complaint to the LEA.

Signature

Date

**Please return form to: PDE/BSE, Division of Compliance Monitoring and Planning, 333
Market Street, 7th Floor, Harrisburg, PA 17126-0333**

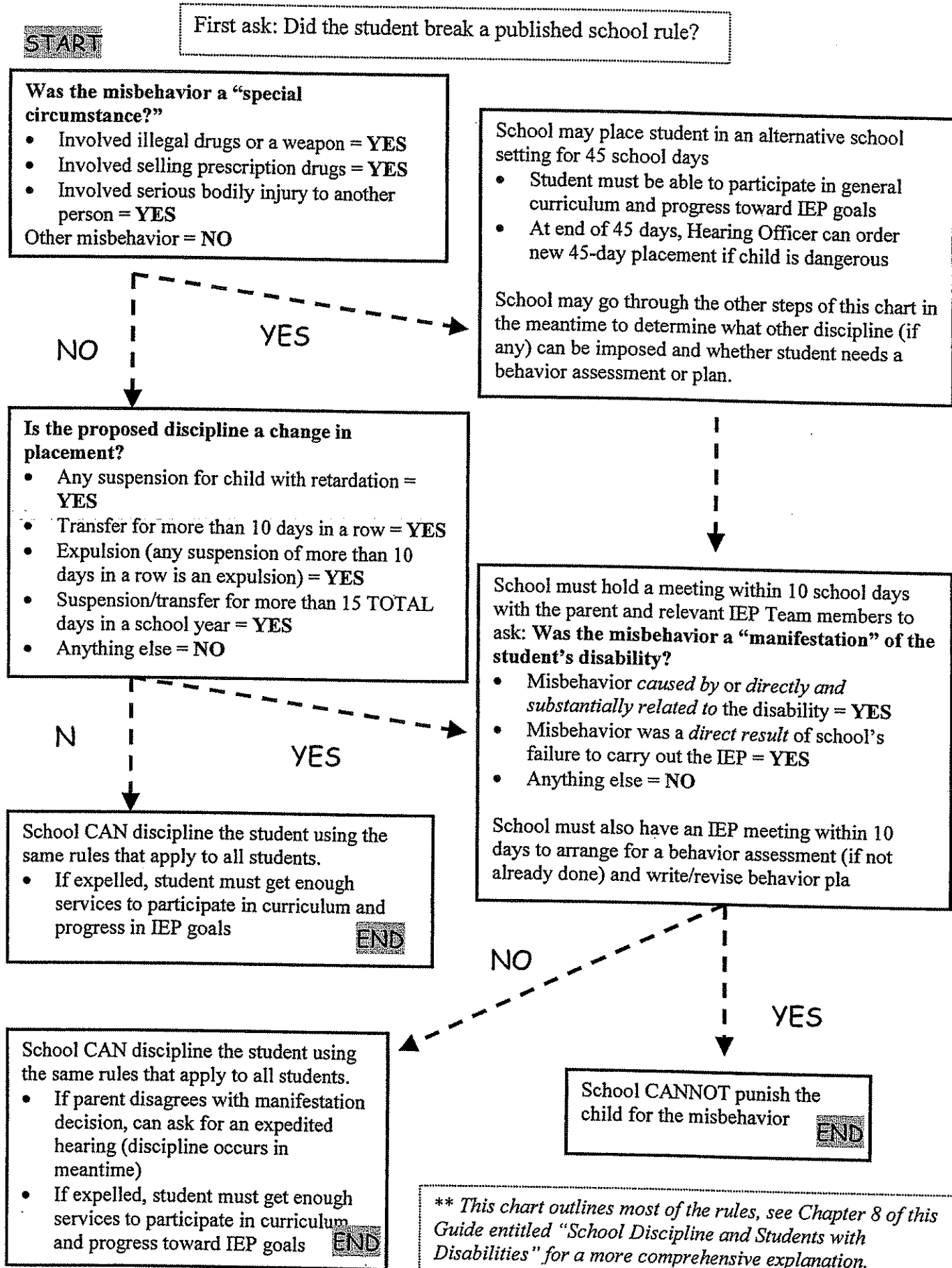
ConsultLine - CRP

Initials

Date

APPENDIX 8

Discipline Flowchart: Children with IEPs in Public Schools**



APPENDIX 9

LEGAL REFERENCES

There are federal, state, and local laws and policies that regulate the provision of special education to children with disabilities. Federal law is passed by the United States Congress. Federal law sets a "floor," or baseline, of protections for children with disabilities, and state law may expand on those rights (and in fact the rules in Pennsylvania are more expansive than federal law in a number of important areas).

FEDERAL LAWS AND REGULATIONS

The **Individuals with Disabilities Education Act (IDEA)** (also known as the Individuals with Disabilities Education Improvement Act or IDEIA 2004) is the main federal law that requires states and public schools to provide a free appropriate public education for children with disabilities, establishes important procedural protections, and more.

The law is published at 20 United States Code (U.S.C.) Sections 1400 through 1482. The regulations covering school-aged children that implement the IDEA are published at 34 Code of Federal Regulations (C.F.R.) Part 300. Both the law (called a statute) and the regulations can be found at: <http://idea.ed.gov/> (Click on "Part B" - that is the part of the law that covers children ages 3-21.)

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a "civil rights" law that prohibits discrimination against otherwise qualified people on the basis of disability. Section 504 also requires public schools to provide children with disabilities a free appropriate public education. The law applies to all recipients of federal funding.

Section 504 is published at 29 U.S.C. Section 794, and its implementing regulations that apply to public schools are published at 34 C.F.R. Part 104. More information about Section 504 can be found at:

<http://www.ed.gov/about/offices/list/ocr/504faq.html>. The regulations can be found at: <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>.

The **Americans with Disabilities Act (ADA)** is also a "civil rights" law and it was modeled on Section 504. The ADA prohibits discrimination on the basis of disability in employment, state and local government (including school districts and public preschool programs), public accommodations (like daycare centers), commercial facilities, transportation, and telecommunications. It also applies to the United States Congress. It requires public schools, nonreligious private schools, and other entities to make "reasonable accommodations" for children with disabilities.

Information about the ADA and its implementing regulations can be found at: <http://www.ada.gov/>.

STATE LAW AND REGULATIONS

The **Pennsylvania School Code** (state law) requires that school districts identify and appropriately educate all exceptional children, including children with disabilities and children who are mentally gifted.

Relevant sections of the School Code are found at 24 Purdon's Statutes (P.S.) Sections 13-1371 through 13-1377.

Several chapters of the **state education regulations** apply to special education programs and services:

22 Pa. Code Chapter 4: Chapter 4 sets out the state's academic standards and testing requirements. While Chapter 4 applies to all public school children, parts of Chapter 4 refer specifically to children who receive special education (such as the high school graduation requirements).

22 Pa. Code Chapter 14: Chapter 14 is the main chapter of state regulations on special education, including evaluations, IEPs, placement options, early intervention for children ages three (3) to school-age, and due process procedures.

22 Pa. Code Chapter 15: Chapter 15 addresses a school district's responsibility to comply with Section 504 and provide aids, services, and

accommodations to meet the needs of children with disabilities as adequately as the needs of nondisabled children are met.

22 Pa. Code Chapter 16: This chapter governs the provision of special education services to children who are mentally gifted, including children who are both gifted and have disabilities.

22 Pa. Code Chapter 171: This chapter applies to the operation of, and placement of children at, approved private schools for children with disabilities.

22 Pa. Code Chapter 711: Chapter 711 contains the state regulations governing special education services to children in charter schools and cyber charter schools.

These regulations can be found at www.pacode.com (click on "Browse" and then click on "22 Education"). A side-by-side version of the Chapter 14 regulations and the federal IDEA regulations can be found at:

<http://www.pattan.net/files/LAW/SideBySide091908.pdf>. Copies of these regulations can also be obtained from the Special Education ConsultLine at 1-800-879-2301.

State Policy Guidance: The Pennsylvania Department of Education also issues Basic Education Circulars (BECs) on a variety of topics related to special education and other school issues. The BECs can be found at http://www.education.state.pa.us/portal/server.pt/community/basic_education_circulars/7497.

LOCAL POLICIES

Each school district and intermediate unit must prepare a "**special education plan**" that describes what services will be provided and other aspects of its special education program (such as its placement options). These plans must be approved by the local school or IU board and by the Pennsylvania Department of Education. School districts must revise their plan every three years; IUs must do a plan every year. You can usually get a copy of your district's plan through the Superintendent's office or on your school district's website.

Charter schools and cyber charter schools are not required to prepare a special education plan, but they must submit a yearly report to PDE that describes, among other things, the services and programs available to children with disabilities.

APPENDIX 10
ADVOCACY AND SUPPORT GROUPS

(This is not an exhaustive list)

ABOARD (Advisory Board on Autism & Related Disorders)

800-827-9385

412-781-4116

www.aboard.org

THE ARC OF PA

800-692-7258 (Statewide number - can provide local chapter information)

717-234-2621

www.thearcpa.org (includes complete list of contact information for all local chapters - listed below is contact information for a few of the larger chapters)

THE ARC OF CHESTER COUNTY

610-696-8090

www.arcofchestercounty.org

THE ARC OF DAUPHIN & LEBANON COUNTIES

717-920-2727 (Dauphin County Office)

717-270-5307 (Lebanon County Office)

www.arcofdc.org

THE ARC OF MONTGOMERY, BERKS AND BUCKS COUNTIES

610-603-0227 (Berks County Office)

610-265-4700 (Montgomery County Office)

www.marcpa.org

THE ARC OF PHILADELPHIA/PDDC

215-229-4550

www.arcpddc.org

THE ARC OF GREATER PITTSBURGH/ACHIEVA

412-995-5000

www.achieva.info

AUTISM SOCIETY OF AMERICA-GREATER PHILADELPHIA CHAPTER

610-358-5256 (Phila. and Suburbs)

www.asaphilly.org

BUREAU OF SPECIAL EDUCATION'S CONSULTLINE

800-879-2301

(Statewide Parent Helpline operated by the Pennsylvania Department of Education's Bureau of Special Education)

CHILDREN WITH ATTENTION DEFICIT DISORDERS (CHADD)

800-233-4050 (National Resource Center on AD/HD)

301-306-7070 (National Office)

www.chadd.org

DISABILITY RIGHTS NETWORK OF PENNSYLVANIA (DRN)

800-692-7443

717-236-8110

www.drnpa.org

EPILEPSY FOUNDATION EASTERN PENNSYLVANIA

800-887-7165

www.efepa.org

HISPANICS UNITED FOR EXCEPTIONAL CHILDREN (HUNE, INC.)

215-425-5112 (Special Education Helpline)

215-425-6203 (General Contact Number)

www.huneinc.org

LEARNING DISABILITIES ASSOC. OF PENNSYLVANIA

717-939-3731

888-775-3272 (Toll Free in PA)

www.ldapa.org

YOUR LOCAL TASK FORCE

There is a Task Force in each intermediate unit in the state. For information on the Task Force in your area, call the State Task Force Office at 800-360-7282/

MENTAL HEALTH ASSOCIATION IN PENNSYLVANIA (MHAPA)

717-346-0549

www.mhapa.org (click on "Affiliates" for information about regional offices)

MHAPA's Children's News Website: www.pachildrensnews.org

Pennsylvania's Children's News Voicemail Box: 866-578-3659

MENTAL HEALTH AMERICA - ALLEGHENY COUNTY

412-391-3820

www.mhaac.net

MENTOR PARENT PROGRAM, INC.

888-447-1431 (Northwest and Rural Pennsylvania)

www.MentorParent.org

MUSCULAR DYSTROPHY ASSOCIATION

800-572-1717

www.mdaua.org

PARENT EDUCATION AND ADVOCACY LEADERSHIP (PEAL) CENTER

866-950-1040

412-281-4404

www.pealcenter.org

PARENT EDUCATION NETWORK (PEN)

800-522-5827

717-600-0100

www.parentednet.org

PARENTS INVOLVED NETWORK of PENNSYLVANIA (PIN)

(A project of the Mental Health Association of Southeastern Pennsylvania)

800-688-4226

215-751-1800 ext. 513

www.pinofpa.org

PENNSYLVANIA'S EDUCATION FOR ALL COALITION (PEAC)

267-232-0570

www.paedforall.org/

PENNSYLVANIA TOURETTE SYNDROME ASSOCIATION (PA-TSA)

800-990-3300

717-337-1134

www.patsainc.org

UNITED CEREBRAL PALSY of PENNSYLVANIA (UCP)

866-761-6129

717-441-6049

www.ucpofpa.org

APPENDIX 11 USEFUL WEBSITES

ADHDNews: <http://www.adhdnews.com/>

Excellent website for information and resources about ADHD. Site has ADHD blogs, message boards, and lists ADHD resources by state.

Council for Exceptional Children (CEC): <http://www.cec.sped.org/>

The CEC is dedicated to improving educational outcomes for individuals with exceptionalities, children with disabilities, and/or the gifted. The website provides information about the educational rights of children with disabilities, and it offers an on-line discussion forum for CEC members.

The Council of Parent Attorneys and Advocates (COPAA):

<http://www.copaa.net/>

COPAA is a nonprofit organization of attorneys, advocates, and parents established to improve the quality and quantity of legal assistance for parents of children with disabilities. COPAA's site includes a database for finding attorneys and advocates who represent parents throughout the United States.

Building the Legacy: IDEA 2004: <http://idea.ed.gov/>

Site maintained by the U.S. Department of Education's Office of Special Education Programs (OSEP) for resources related to the federal special education law - the Individuals with Disabilities Education Act (IDEA). Includes links to the IDEA and its regulations.

LD OnLine: Learning Disabilities Information & Resources:

<http://www.ldonline.org/>

Excellent site for basic and in-depth information about a wide range of learning disabilities. Offers a free electronic newsletter to provide updates about issues involving children with learning disabilities.

Office for Dispute Resolution: <http://odr.pattan.net>

The Office for Dispute Resolution administers the mediation and due process systems in Pennsylvania, and provides training and services regarding alternative dispute resolution methods.

Online Asperger Syndrome Information and Support (O.A.S.I.S.):

<http://www.udel.edu/bkirby/asperger/>

Provides information about Asperger Syndrome, links to other PDD/Autism

websites, and information about support groups for parents of children with Asperger Syndrome.

Pennsylvania Department of Education (PDE): <http://www.education.state.pa.us>.

Contains information about public schools in Pennsylvania (including special education information) -

http://www.education.state.pa.us/portal/server.pt/community/special_education/7465,

and provides links to all of PDE's Basic Education Circulars (policy statements) at http://www.education.state.pa.us/portal/server.pt/community/basic_education_circulars/7497, intermediate unit web pages, and school district web pages.

Pennsylvania Training and Technical Assistance Network (PaTTAN):

<http://www.pattan.net>

PaTTAN is an initiative of the Pennsylvania Department of Education that works in partnership with families and schools to support programs and services to improve the learning and achievement of children with special needs. PaTTAN's website contains *a lot* of useful information, including information on free trainings, research and resources on evidence-based practices (such as inclusive practices, progress monitoring, and positive behavior support), and links to many helpful publications.

From PaTTAN's site, you can access the Pennsylvania annotated forms used by school districts and charter schools, such as the IEP, NOREP, and Procedural Safeguards Notice.

Positive Behavioral Interventions and Supports: <http://www.pbis.org>

Site maintained by the U.S. Department of Education's Office of Special Education Programs that provides information and technical assistance about behavioral systems to help states and school districts design effective schools.

University of Kentucky Behavior Home Page:

<http://www.state.ky.us/agencies/behave/homepage.html>

Provides useful information about working with children with mental health needs.

Wrightslaw: <http://wrightslaw.com/>

Excellent site operated by an attorney who represents parents in special education matters. Provides updates of recent court decisions from around the country, along with basic information about special education law.

APPENDIX 12

Glossary of Frequently Used Special Education Acronyms & Abbreviations in Pennsylvania

| | |
|------------------------|--|
| AT | Assistive technology |
| BECs | Basic Education Circulars. Policy guidance on education issues from the Pennsylvania Department of Education. |
| BSE | Bureau of Special Education. Office in the Pennsylvania Department of Education that administers and manages the state's special education resources and oversees compliance with the IDEA. |
| Chapter 14 | The Chapter in Title 22 of the Pennsylvania Code which contains the Pennsylvania State Board of Education's special education regulations that implement the IDEA. |
| Chapter 15 | The Chapter in Title 22 of the Pennsylvania Code which contains the Pennsylvania State Board of Education's regulations that implement Section 504 of the federal Rehabilitation Act of 1973. |
| Compensatory Education | Make up services owed to a child with a disability who didn't receive the services listed in her IEP or who didn't receive an appropriate program or whose legal rights have been violated in a significant way. Also known as "comp. ed." |
| DPH | Due Process Hearing (special education hearing) |
| ED | Emotional Disability (or Emotional Disturbance) |
| EI | Early Intervention |
| EIS | Early Intervening Services |
| ER | Evaluation Report |
| ESY | Extended School Year |
| FAPE | Free Appropriate Public Education |
| FBA | Functional Behavior Assessment |
| IDEA | Individuals with Disabilities Education Act. Federal law that requires states to provide children with disabilities a free appropriate public education (FAPE) in the least restrictive environment (LRE). |
| IDEIA 2004 | Individuals with Disabilities Education Improvement Act of 2004. Name of the law which reauthorized and amended the IDEA in 2004. |
| IEE | Independent Educational Evaluation |
| IEP | Individualized Education Program (plan for eligible children from ages three through 21) |
| IFSP | Individualized Family Service Plan (plan for eligible children from birth to age three) |
| IU | Intermediate Unit. Pennsylvania's 29 Intermediate Units are regional education service agencies charged with providing programs and services to public, private and non-public (religious) schools. |
| LEA | Local Educational Agency. In Pennsylvania, usually a school district, a |

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| | charter school, or an IU. |
| LRE | Least Restrictive Environment |
| NOREP/PWN | Notice of Recommended Educational Placement/Prior Written Notice |
| ODR | Office for Dispute Resolution. Office funded by PDE to coordinate services for Due Process Hearings and other dispute resolution options (such as mediation and IEP facilitation) - ODR's website is: http://odr.pattan.net/default.aspx |
| OT | Occupational Therapy |
| PaTTAN | Pennsylvania Training and Technical Assistance Network. Provides educators, parents, and agencies involved in special education with a statewide network of technical assistance trainings, and publications. PaTTAN's website is: http://www.pattan.net |
| PDE | Pennsylvania Department of Education. State agency responsible for overseeing the provision of education and educational services to all children within the state. PDE's website is: http://www.education.state.pa.us |
| PASA | Pennsylvania Alternate System of Assessment. Statewide test for children with significant cognitive disabilities who cannot take the PSSA. |
| PBS | Positive Behavior Support |
| PBSP | Positive Behavior Support Plan |
| PSSA | Pennsylvania System of School Assessment. Statewide test measuring student proficiency on state academic standards. |
| PT | Physical therapy |
| PTE | Permission to Evaluate |
| RtI | Response to Intervention |
| SAS | Supplementary aids and services |
| SDI | Specially designed instruction (special education) |
| SEA | State Educational Agency (in Pennsylvania, the Pennsylvania Department of Education). |
| Section 504 Plan | Also known as a Service Agreement, 504 Plan, or 504 Accommodations Plan. Plan adopted for children who are eligible for accommodations or other services due to disability under Chapter 15 and Section 504 of the federal Rehabilitation Act of 1973. |
| SLD | Specific learning disability |
| U.S. DOE | United States Department of Education. Federal agency responsible for overseeing the provision of education and educational services to all children in the United States. |

Resolving Special Education Disagreements**

Step ONE: What is the source of the disagreement?

Determine whether this is an "appropriateness" issue, a "compliance" issue or a "discrimination" issue.

Step TWO: To get more help with questions about your child's special education program, call one of the Advocacy and Support Groups listed in Appendix 10 of this Guide.

**This chart was developed by the PEAL Center. Many thanks to the PEAL Center for allowing ELC to reprint it. More information about the PEAL Center can be found at:

www.pealcenter.org.

Compliance

The school is not doing what it said it would or is not following legal mandates.

The school is not implementing some or all of the provisions in the IEP or did not complete an evaluation within required timelines.

File a Bureau of Special Education Complaint

- Parent must put the complaint in writing on a Complaint Form.
- Parent must give a copy of the complaint to the school at the same time it is sent to the Bureau of Special Education.
- Must clearly state what specific part of the IEP is not being implemented and "how much" of a service the student has missed due to school district's failure to provide that service.
- Should state how school is out of compliance of state or federal law.
- State how to resolve the complaint and/or compensate the student for missed services
- Bureau of Special Education compliance staff will investigate, talking both to parent and school district and make a determination.

Discrimination

Examples: Why can't my kid be in the band?

Why can't my child go on the field trip?

My child doesn't get art class because art is on the second floor and the building doesn't have an elevator.

When your child is being discriminated against because of his/her disability:

- File a complaint with the US Department of Education's Office for Civil Rights or the PA Human Relations Commission.
- US Department of Education or PA Human Relations Commission will investigate and make a finding.

Appropriate program

We can't agree on what should be in the IEP.

After your child has been evaluated for special education services by school district personnel to determine if she is eligible for special education services, OR when you meet to develop your child's IEP, *you and the school district personnel do not agree on whether your child is eligible for special education services or what services your child needs. You MUST write your specific areas of disagreement on a NOREP/PWN.*

You have the following options to resolve the dispute:

- **IEP Facilitation:** You can request a trained neutral IEP Facilitator to assist you and other members of the IEP team to develop the IEP. There is no cost to parents or the school.
- **Mediation:** You can request a non-binding mediation session with a trained neutral Mediator who will work with both you and the school to try to help you reach an agreement satisfactory to both parties. The Mediator cannot impose an agreement. *If you reach an agreement, ask that it be incorporated into the IEP* so it is easier to enforce. There is no cost to parents or school.
- **Resolution Meeting:** If you indicate on the NOREP/PWN that you disagree with the proposed IEP, and you file a Due Process Complaint Notice, the school is required to convene a Resolution Meeting within 15 calendar days to work to resolve the dispute. Only the specific issues identified by you on the Due Process Complaint Notice will be considered.
- **Due Process Hearing:** If the issues are not resolved at the Resolution Meeting, a formal hearing is held with an impartial Hearing Officer who hears evidence by both parties and makes a ruling based on the law. Schools will be represented by an attorney. Parents often are represented by an attorney but it is not required.