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# Parent's Rights in the Special Education Process



**Ohio Coalition for the Education of Children with Disabilities**

The Ohio Coalition for the Education of Children with Disabilities (OCECD) is a statewide, nonprofit organization that serves families of infants, toddlers, children and youth with disabilities in Ohio, and agencies who provide services to them. OCECD works through the coalition efforts of more than 35 parent and professional disability organizations which comprise the Coalition.

Established in 1972 and staffed primarily by parents of children and adults with disabilities, persons with disabilities, and education professionals, the Coalition's mission is to ensure that every Ohio child with special needs receives a free, appropriate, public education in the least restrictive environment to enable that child to reach his/her highest potential. Throughout Ohio, the Coalition's services reach families of children and youth, birth through twenty-six, with all disabilities.

OCECD's programs help parents become informed and effective representatives for their children in all educational settings. In addition, youth are assisted to advocate for themselves. Through knowledge about laws, resources, rights and responsibilities, families are better able to work with agencies to ensure that appropriate services are received for the benefit of their sons and daughters.



## OHIO COALITION FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

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# Special Education

Special education, for students ages 3 to 21, is guided by federal and state requirements. The federal requirements are referred to as The Individuals with Disabilities Education Act (IDEA). The state requirements are referred to as the Ohio Operating Standards for the Education of Children with Disabilities (Ohio Operating Standards).

IDEA protects the rights of students with disabilities and the rights of their parents.



The Ohio Operating Standards identify the state requirements that apply to the implementation of special education and related services to students with disabilities by school districts, county boards of developmental disabilities and other educational agencies. They provide a framework to ensure that all children receive a quality education tailored to their unique needs.

This publication is meant to assist parents obtain services that their child may need in school. Knowledgeable parents are effective parents, making more informed decisions that will ultimately benefit the child's success in school and in life. A parent's involvement is critical to their child's success.

## **Is Your Child Eligible for Special Education?**

To be eligible simply means that your child has been found to need certain educational services because of one or more disabilities. IDEA requires students with disabilities to receive special education and/or related services.

To be considered a student with a disability under this law, your child must require special education and/or related services because of his or her disability in one or more of the following disability categories:

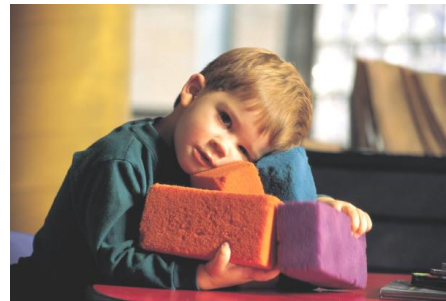
- Autism;
- Deafness;
- Deaf-blindness;
- Emotional disturbance
- Intellectual disability;
- Hearing impairment;
- Multiple disabilities;
- Orthopedic impairment;
- Other health impairment;
- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; or
- Visual impairment.

# Child Find

The Individuals with Disabilities Education Act (IDEA) requires that a state identify, locate, and evaluate all children with a disability residing in the state, regardless of the severity of the disability. (Federal Regulation: 34 C.F.R. 300.128)

## **Child Find includes children that are:**

- Homeless
- Advancing from grade to grade
- Migrant
- Enrolled in private school
- 3 through 21 years old
- Wards of the state
- Suspected of being a child with a disability



## **The purpose of Child Find is:**

- To assist school districts in finding children with disabilities who may not have come to the district's attention.
- To promote public awareness of disabilities to parents, professionals and the general public to locate children who may have special needs.
- To enable children with disabilities to receive the special education and related services that they are entitled to by law.

# I. D. E. A.

## INDIVIDUALS with DISABILITIES EDUCATION IMPROVEMENT ACT 2004

IDEA addresses 6 guiding parts:

### 1) FAPE

Free Appropriate Public Education

This means that an education at **no cost** to the parents is available to all children with disabilities between the ages of 3 and 21 years. This includes children with disabilities who have been suspended or expelled from school.

Children with disabilities are to be provided “**full educational opportunities**” **appropriate** to the child’s needs and manner of learning.

## 2] Appropriate Evaluation

If you think your child may have a disability that is affecting his or her education, you can ask the school district in writing to evaluate your child.

An evaluation is given to help determine if a child is a child with a qualifying disability that requires special education services (not all disabilities do).



**Before** the first evaluation, a reevaluation, or before special services or related services are given, **Written Parental Consent** must be given.

Giving consent means you have been fully informed of all necessary information regarding evaluation of your child.

When you give your consent for evaluation, you are *not* giving consent for the school district to begin providing special education services to your child.

The evaluation will suggest what kinds of special education services your child will need or confirm that your child will be able to learn in a general education classroom with other students. You will be a partner in the evaluation process and a member of your child's evaluation team.



The evaluation is performed using a variety of tools and strategies to measure strengths as well as areas of need.

Evaluation results and other information will be used to write an IEP if the child is eligible.

**For Evaluation, the School District will:**

- 1) Contact the parents to participate in the process.
- 2) Collect information about the child from parents, teachers and others.
- 3) Use tests that do not discriminate.
- 4) Complete the evaluation within 60 days of receiving consent to evaluate.
- 5) Conduct an evaluation team meeting, inviting parents.
- 6) Summarize and interpret the results.
- 7) Determine the child's eligibility for special education services based on the evaluation results. If your child is eligible, the IEP (described on page 11) will be completed within 10 days of the referral for evaluation or within 90 days of your signed consent. The meeting participants become known as the "IEP team".
- 8) Provide parent with a copy of the evaluation team report within 14 days of the evaluation team meeting or before the IEP team meeting, whichever comes first.

It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification.



If your child is determined **not eligible** for special education and related services and you disagree, you may:

- Request an independent educational evaluation (this is an evaluation by someone not employed by the school district)
- Request a due process hearing (this is a form of hearing to resolve the disagreement (see page 25 for more details).

If your child is determined **not eligible** for special education services, the school district:

- Provides the parents with a copy of the evaluation team report
- Determines other appropriate changes and “interventions” or forms of assistance to help the child
- Considers whether your child is eligible for services under another federal law, Section 504 of the Rehabilitation Act of 1973. Section 504 is an anti-discrimination, civil rights statute that requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met.

## Response to Intervention (RTI)

RTI is a scientifically research-based process used to determine if a child who is not yet considered a child with a disability needs additional assistance.

The school district may want to put RTI into place to see if the child is lacking an understanding of the subject matter or if the child may have a disability.

RTI should specify a start date, how many sessions will occur, and an ending date. Determine who will be responsible for the intervention and collecting the data.

- School district *may not* use interventions to delay or deny a child's timely initial evaluation to determine eligibility for children suspected of having a disability.
- Appropriate interventions should be implemented during the same sixty-day time frame while the district conducts a full evaluation.



# 3] IEP

## Individualized Education Program

After the evaluation meeting is held and determination of eligibility is made, an IEP team meeting is scheduled. At **age 14**, a **Transition Plan** is a required component of the IEP and postsecondary goals must be written for the child's future.

### People on the IEP team are:

- Parents
- Child
- Special education teacher
- Regular education teacher
- District representative – person who is aware of all programs available and can make money decisions
- A person who can interpret evaluation results

### Initial IEP meeting:

- Participants share information about your child's strengths and needs
- Parents help to develop annual goals, and short-term objectives; or benchmarks that can be measured
- Determine with the school district the appropriate special education and related services your child will receive

**Do not sign any document unless you agree with what is written in it.**

### **Consent for your child to receive special education services**

- Parent gives consent for their child to receive special education and related services that enable the child to participate and progress in the general curriculum (meaning what students in a given grade generally study), or denies such consent
- If you refuse consent for your child to receive special education and related services, the school district does not have to provide FAPE and your child has none of these protections of IDEA
- On an *initial IEP only*, parents have the option of refusing consent for one or more specific services.

### **Revoking your consent**

If you change your mind, you may revoke your consent for and remove your child from all special education and related service. The revocation of consent must be in writing. Once the school district receives your written revocation of consent, the following things will happen:

- School district will continue to implement your child's IEP as written until they provide you with a prior written notice (see definition on page 18)
- Once the school district provides prior written notice they will no longer implement your child's IEP and will consider your child as a general education student.

An IEP is a written statement for a child with a disability that outlines the educational goals and objectives your child will work on in the coming year. It also outlines the supports and services your child needs to meet the goals stated in the IEP.

The IEP includes information about:

- your child's future;
- how your child is currently learning and functioning
- how your child's disability affects his or her participation and progress in the general education curriculum (the same curriculum taught to children without disabilities).
- specific goals that can be measured annually, including goals for how much your child learns and how well your child functions.

The initial or first IEP must be developed within whichever of these time periods is the shortest:

- 30 calendar days of the decision that the child needs special education and related services;
- 90 calendar days of receiving the parents' consent for an evaluation; or
- 120 calendar days of when a parent or school district makes a request for evaluation.

The IEP must be in effect by the child's third birthday and at the beginning of each school year following that. The IEP team must review your child's IEP on a regular basis (at least once a year) to determine if your child is meeting the annual goals.

# 4] Least Restrictive Environment (LRE)

LRE is the combination of services, supports and location, that will enable a student with disabilities to achieve their greatest success and independence.

Education with non-disabled students and in a regular education classroom is to be considered first.

LRE is allowing children to learn, grow, and develop in an environment that is typical for non-disabled peers or as close to that environment as possible where the child can make progress with the supports they need to be successful.

Special classes, separate schooling or removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved.



# 5] Parent Participation

Parents are **EQUAL** partners on the team of people that will make decisions to determine their child's:

- Eligibility for services
- Educational placement

Parents, including surrogate parents, must be given the opportunity to attend and actively participate in all meetings for their child that involve:

- Identification
- Evaluation
- Eligibility for special education
- Educational placement
- Individualized Education Program (IEP) development

School districts must:

- Provide advance notice in writing (required form)
- Hold meetings at mutually agreed upon locations and times
- Allow options of face-to-face, phone conference, or video conference meetings
- Document attempts to gain the parents' participation



## **A Parent is defined as:**

- A biological or adoptive parent of a child but not a foster parent of a child;
- An individual acting in place of biological parent, such as, grandparent, stepparent or other relative;
- A guardian authorized to act as the child's parent.
- A surrogate parent who has been appointed to the child; or
- A person(s) ordered by judicial decree to act as the parent.

## **What is a Surrogate Parent?**

A surrogate parent is an individual who may represent a child with a disability in all matters related to qualifying for and receiving special education services.

A surrogate parent:

- Can be appointed by a judge, if they meet the surrogate parent requirements.
- Is as a rule appointed by the school district.
- Cannot be an employee of the school district, the Ohio Department of Education, or any other agency involved in the care and education of the child.
- Has completed the state approved "surrogate parent training".

Parents, including surrogate parents, have the right under IDEA to be a part of *all* meetings that discuss their child's educational life. It is not just about participation; parents are to be actively involved in the decision making.

# 6] Procedural Safeguards

Parents must be given their “procedural safeguards”, the process they can follow if they **do not agree with or have questions** on the process of evaluating and providing services to a child with disabilities. They are listed in a booklet from the Ohio Department of Education called **“A Guide to Parent Rights in Special Education”** that is given to the parents by the school district.

Notice of “procedural safeguards” should be given when:

- Initial referral for evaluation
- Reevaluation
- When an IEP meeting is called
- Filing for a due process hearing

The information of procedural safeguards must be in an understandable language.



# Prior Written Notice

A school district must give parents written notice, called prior written notice, within a reasonable amount of time before the school district proposes or refuses to begin or change any of the following areas that would pertain to the needs of a child with disabilities:

- Identification
- Evaluation
- Educational placement
- FAPE

Prior written notice is a required special education form.

The child's IEP will serve as the prior written notice unless you disagree with the IEP. If you disagree with the IEP, the school district must give you separate prior written notice before your child's IEP is implemented.

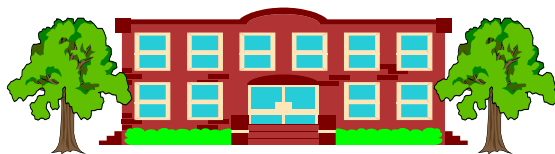
If a service is denied to a student, the parent may write a letter to the school requesting **prior written notice**. The notice will contain information about the service that the school is refusing to place on the IEP.

## Prior written notice must include:

- A description of the action proposed or refused by the district;
- An explanation of why the district proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record or report the school used to make its decision;
- A statement that parents have protection under the IDEA's procedural safeguards, and if the notice is not an initial referral for evaluation, the means by which a parent can get a description of the procedural safeguards;
- Sources for parents to contact for assistance in understanding the requirements of the IDEA;
- A description of the other options the IEP team considered and the reasons why those option were rejected;
- A description of other factors relevant to the district's proposal or refusal.

Prior written notice must be provided in a language that is **understandable** to the general public. It also must be written in the **parent's native language** or other mode of communication.

If the parent's native language or other mode of communication is NOT a written language, the district needs to take steps to verbally translate or by another understandable way.



# School Records

Parents have the right to inspect and review all of their child's educational records.

Parents may request copies of the records as well but the school may have up to 45 days to complete the process of copying. The school may also charge a reasonable fee for this process.

Records would include any document that contains personally identifiable information pertaining to the child in question.

# Documentation

Important because it provides:

- A running record of meetings and correspondence
- A sequential timeline of actions and events
- An overview of supports, requests, and services
- A record of ideas and suggestions discussed and tried; what was successful or did not work
- Elimination of misunderstandings
- The necessary records required when filing a state complaint or due process.

# Reevaluation

Reevaluation determines if your child continues to have a disability and to determine the educational needs of your child. Information is gathered and reviewed if your child continues to need special education and related services and if any additions or changes are needed to meet IEP goals.

A reevaluation must be conducted:

- If the school district or your child's teacher determine that your child's educational or related services call for it;
- If your child moves from preschool special education to school-age special education;
- To make a change in your child's disability category; or
- Before determining that your child is no longer a child with a disability.

A reevaluation is not required if your child's eligibility is ended due to graduation from high school with a regular diploma, or due to your child reaching age 22.

A reevaluation cannot be requested by you more than once a year, unless you and the school district agree to one. It must be done at least once every three years, unless you and the school district agree that a reevaluation is not necessary.

# Facilitation

If you are concerned about the evaluation or reevaluation of your child for special education, or about your child's IEP, an option called facilitation might work for you.

Facilitation is when you ask the Department to arrange for a facilitator to attend a meeting of your child's evaluation or IEP team.

Facilitation takes place in a team meeting. Having a facilitator helps the team be productive and stay focused on the student. Facilitators are professional mediators who have been trained by the Office for Exceptional Children in special education processes.

You can request Facilitation any time. Once you do, you and the school district must both agree to participate. If you both agree, the Office for Exceptional Children will give you choices of a facilitator to direct the meeting. If you and the district cannot agree on a facilitator, the office will assign one for you. There is no cost to you or the district for facilitation.

## The Facilitator:

- Remains a neutral third-party (does not take sides or work for you or the district);
- Is not part of your child's IEP or evaluation team;
- Does not make decisions, but guides the team to find solutions;
- Keeps the meeting on track and the team focused on your child and your child's needs.



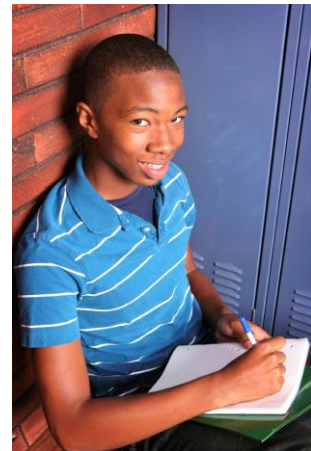
# Extended School Year (ESY)

Extended School Year Services are special education and related services a child with a disability may receive beyond the normal 180 day school year. ESY is determined by the IEP team.

The extended school year is provided at no cost to the parents and must include the same special education and related services on the child's IEP.

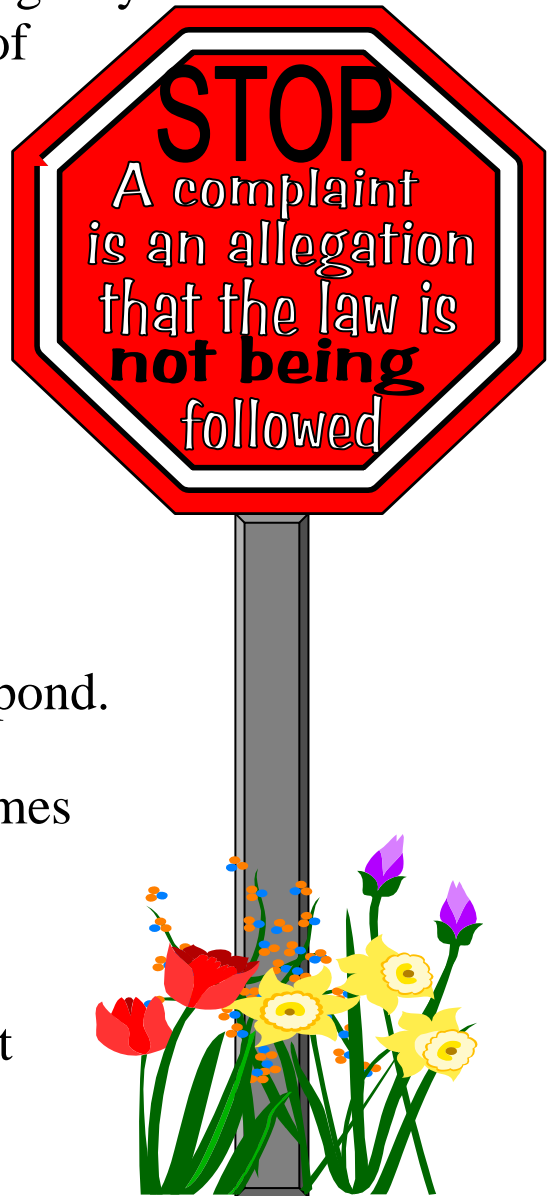
The school district will consider the following when determining if extended school year services should be provided:

- Whether extended school year services are necessary to prevent significant regression of skills or knowledge retained by the child so as to seriously impede the child's progress toward the child's educational goals; and
- Whether extended school year services are necessary to avoid something more than adequately recoupable regression.



# State Complaint Procedures

- The statement that a public agency has violated a requirement of Part B of IDEA.
- The violation is not more than one year old.
- The facts of the complaint are clearly written and sent to the state education agency (SEA).
- The SEA has 60 days to respond.
- Time extensions are sometimes available.
- The decision will contain actions needed to implement the final decision.



# Mediation

Mediation is requested by the parents of a student with disabilities or by a school system.

It is sought because, for one reason or another, the parties involved have not agreed on FAPE.

- **Voluntary** – one's own choice or consent
- **Timely** – within a reasonable amount of time (usually within 45 days)
- **Impartial** – treated fairly or equally
- **Confidential** – not public knowledge; private
- **Written agreement** – signed, written document or official paper
- Mediation may begin with everyone meeting in the same room.
- After the mediator explains the mediation process, the school personnel may move to another room.
- The mediator then meets with the parents and their support people to discuss the issues regarding FAPE.
- The mediator then moves from room to room until an agreement is made or until it is decided that an agreement cannot be reached.
- If an agreement is reached, it is written and signed by both parties the day of the mediation.
- There are other models of mediation that may be used.



# Due Process Hearing

If the mediation process does not resolve the issues of FAPE, a parent may request a **DUE PROCESS HEARING**.

When **requesting** a Due Process Hearing the parent must provide **in writing** to the school and State Educational Agency (SEA):

- Child's name, address, and school of attendance
- The problem the parent wants resolved
- The solution the parent wants

It is recommended that a parent obtain the **services of an attorney** for a due process hearing.

The school must provide information in writing to parents about:

- Mediation
- Information on free or low-cost legal services
- A model form to assist parents when requesting a due process hearing

Within **45 days** after the State Educational Agency **receives the letter requesting** a due process hearing, a hearing officer studies the information. Then a due process meeting is held and a decision is made. A copy of the decision is mailed to the parent and school.

The hearing officer may **grant an extension**, if either the school or parent needs additional time to gather information.

A **list of hearing officers** is given to the parent and school from the SEA. Both parties **agree on one** or the SEA appoints one.

The DUE PROCESS HEARING is set up **similar to a courtroom**. When each party has presented their documentation and witnesses, the hearing is over. The hearing officer **then makes his/her decision** and **mails** it to each party as stated previously.

A **state level review process** is available. The review will be completed **within 30 days** of request and a copy is mailed to the parent and school.



# Age of Majority

In the state of Ohio when a child reaches their 18<sup>th</sup> birthday, they are no longer considered a minor.



Under IDEA when a child reaches the age 18 or the age of majority, the rights afforded the parents under IDEA transfer to the child unless the parents have obtained guardianship.

An explanation of these rights, a copy of ***A Guide to Parent Rights in Special Education***, must be given to your child at least one year prior to his/her 18<sup>th</sup> birthday.

At least one year before a child turns 18, the child's IEP must include a statement that the parents and child have been informed that all rights under IDEA will transfer from you to the child.

# Checklist of Rights

- I **requested an evaluation** in writing from the school my child attends. I gave consent in the letter to begin the evaluation process.
  
- I sent the letter **certified mail** and kept a copy for my records. Date sent \_\_\_\_\_.
  
- I received a copy of "**A Guide to Parent Rights in Special Education**". This is a booklet that explains my procedural safeguards. (My rights if I disagree with any decision made.)
  
- The **evaluation is completed**. Date \_\_\_\_\_.
  
- A **meeting** was set and held **to review the evaluation** results. I was given a copy of the evaluation.
  
- I **AGREE** with the evaluation results and **signed** the evaluation form. Eligibility for services was determined.
  
- I **do NOT AGREE** with the evaluation report. I **DID NOT SIGN** it.
  
- I did not sign the evaluation report so I am requesting an **Independent Evaluation**.
  
- A **list** of Independent Evaluation Examiners was given to me by my child's school.
  
- The **independent evaluation was reviewed** with the team. The evaluation team report was signed and eligibility for services was determined.
  
- My child is eligible for services and an **IEP meeting date** is setup. I received written notification of the IEP date. Date for IEP meeting \_\_\_\_\_.



I returned the IEP meeting form with agreement on the date or gave some **alternate dates** to the school. I also listed who would be attending the IEP meeting with me.

At the IEP meeting, my **thoughts and ideas are valued**.

If my child is **14 years old**, the first form completed on the IEP is the **Transition Form**.

The IEP meets the needs of my child discussed in the evaluation report. I **AGREE with the IEP** and have signed it. Date signed\_\_\_\_\_.

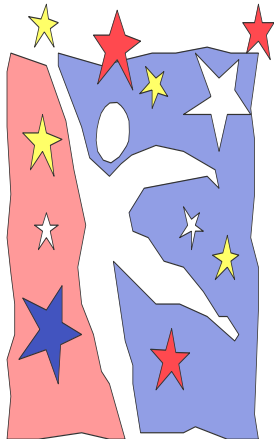
**I DO NOT AGREE** with the IEP and have **NOT SIGNED** it.

I have requested **Prior Written Notice** for each service for which I have documented a need and that the school is denying to my child.

I have **reviewed** and/or **received a copy** of all my child's **records**.

I have **requested** in writing a **Mediation** and/or **Due Process Hearing**.  
Date\_\_\_\_\_.

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Laws and regulations help insure predictability.

They create a foundation that when combined with a variety of circumstances will produce the same results. In this case the result is FAPE.

Parents and schools working together under these circumstances can be assured that appropriate services will be provided for each child under IDEA.

For this reason, parents and schools working together with the same knowledge base in regards to the laws and regulations and for the benefit of the student is *always* best practice.

Information for this booklet was taken from “Operating Standards for Ohio Educational Agencies serving Children with Disabilities”, “A Guide to Parent Rights in Special Education” and “Whose IDEA Is This?”



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