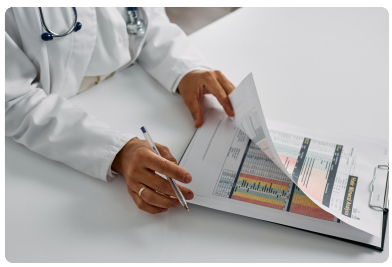
The information in this newsletter is not a substitute for legal advice.

Medical Diagnosis vs Educational Eligibility



It is very logical to think if your child has been diagnosed with a disability by a physician that your child will automatically be eligible for Special Education services through their local school district. Having a medical condition does not necessarily mean that a child requires special education and related services. A disability must impact a child's learning, and their ability to participate in the general education curriculum. The student must require specially designed instruction [LH1] and related services to benefit from their education.

Medical professionals will conduct an evaluation which can include a medical history, physical exam, interview, review of records, observations, or specific tests. A clinical diagnosis can be made based on specific symptoms that can be seen or are known.

Conditions do not have to affect school performance in order for medical professionals to diagnose a condition. Conditions are considered ongoing unless symptoms change, and then the diagnosis can change. Treatment is prescribed due to the needs of the child and addresses the medical issues.

Common Myths

- A child diagnosed with a disability by a physician or clinician is automatically eligible for Special Education and related services.
- Schools can diagnose a child with a disability.
- School districts can require a family to get a clinical diagnosis.

- School psychologists are the only team members who can identify a child with a disability.
- Schools are the only ones able to able to request an evaluation to determine eligibility for special education services.
- School districts are obligated to follow your doctor's recommendations.

Did you know

Child Find requires all school districts to locate, evaluate, and identify all children with suspected disabilities who may be in need of special education and related services, regardless of the severity of their disabilities. This obligation to identify all children who may need special education services exists even if the school is not providing special education services to the child.

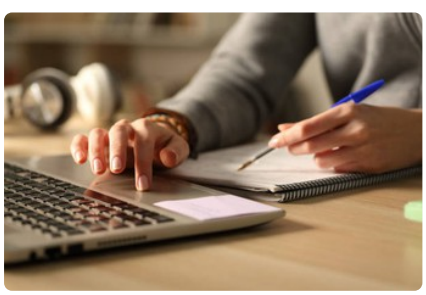
The primary purpose of the Individuals with Disabilities Education Act is to ensure that all children with disabilities receive a free appropriate public education [FAPE], including special education and related services that are "designed to meet their unique needs and prepare them for further education, employment, and independent living ..." (20 U.S.C. 1400(d)

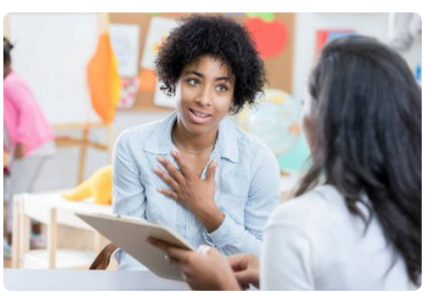
After the district does an evaluation, if you disagree with the results, you the parent or guardian have the right to ask for an outside evaluation, also known as an Independent Education Evaluation, at the district's expense.

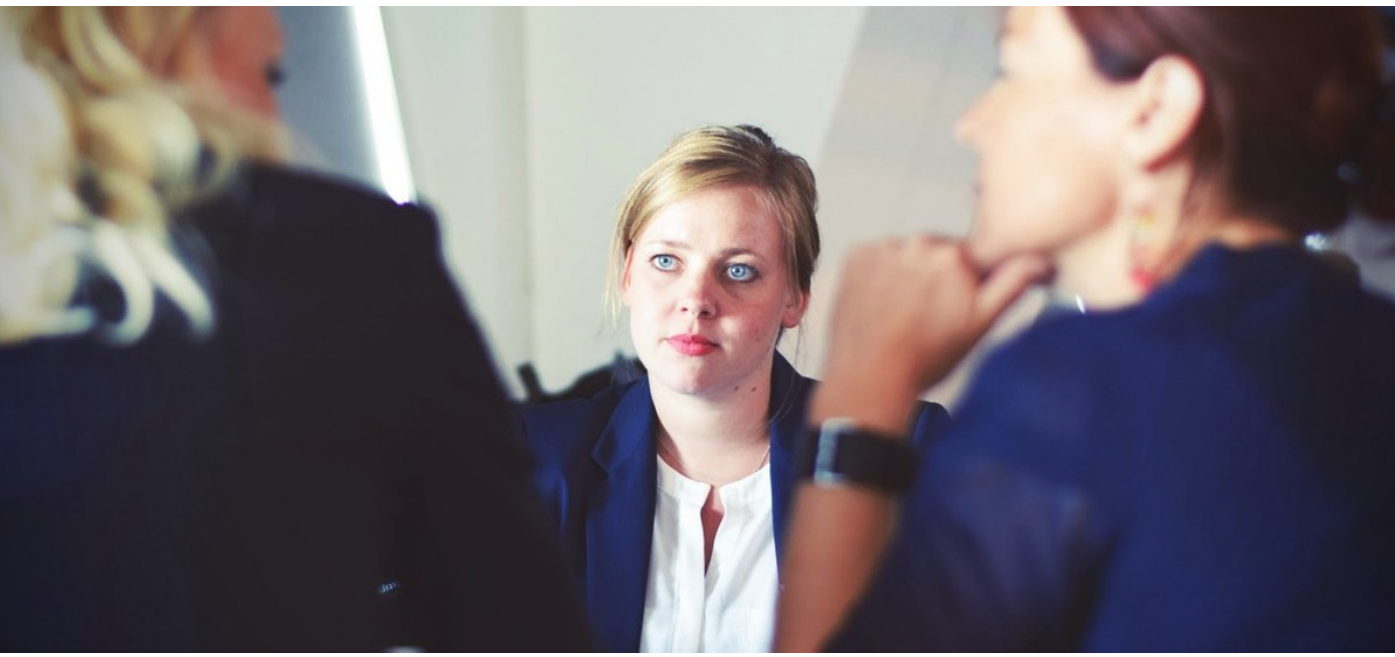
Response to Intervention (RTI)
On January 21, 2011, a memorandum from the Office of Special Education Programs, US Department of Education, to State Directors of Special Education stated that a Response to Intervention (RTI) process **cannot be used to delay or deny an evaluation** under the Individuals with Disabilities Education Act (IDEA).

What should I do if I suspect that my child's diagnosis is having an impact on their education?

Write a letter or email to the principal and teacher, and share your concerns about why you the parent or guardian suspect your child may have a disability. In your letter, request a meeting with school personnel to sign a “request for evaluation” form and set a date for an evaluation planning meeting.







Special education eligibility is a three-prong decision.

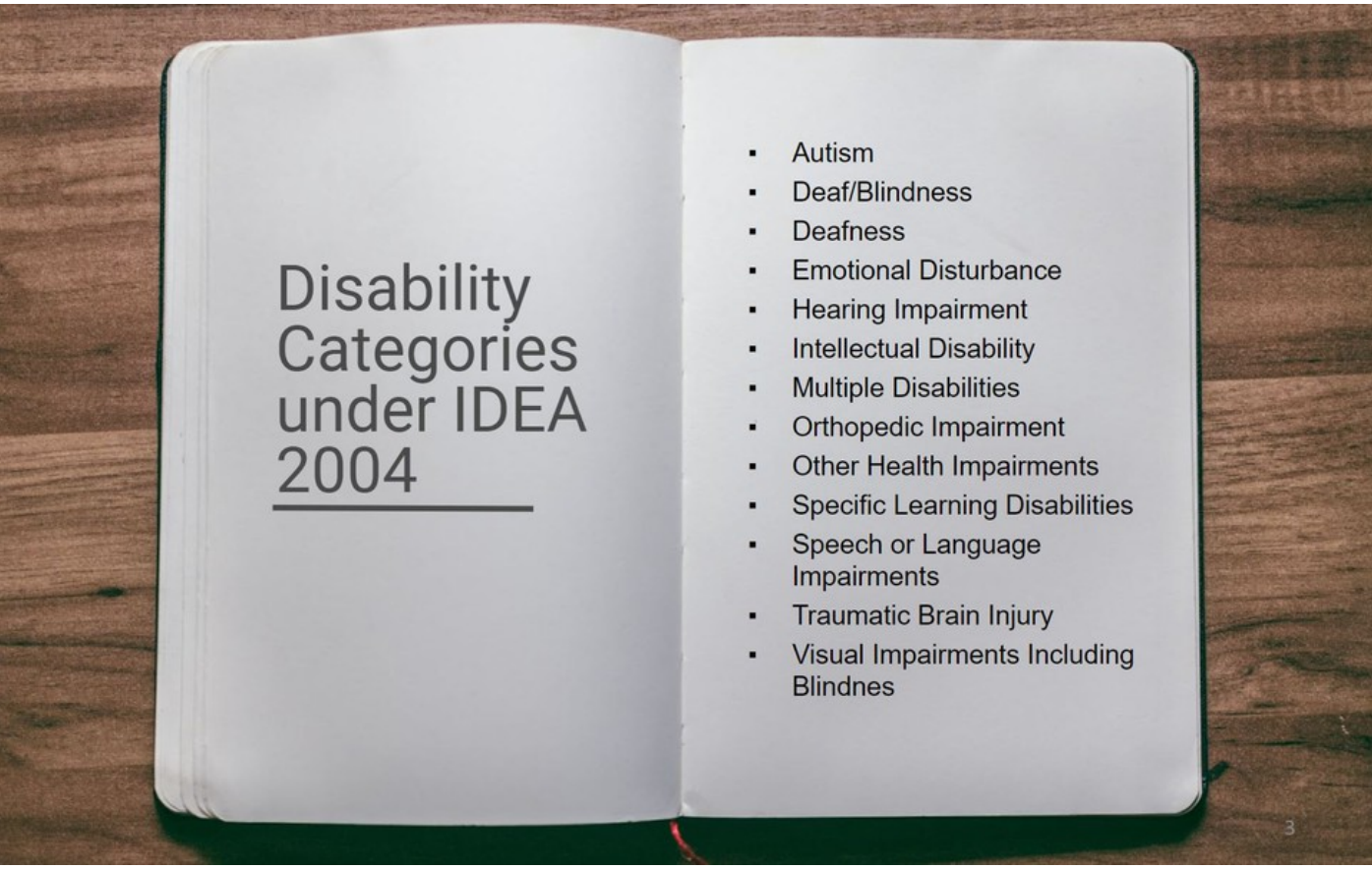
First, the team must first decide if the child has one or more disabilities and if the child meets the regulatory definition of one or more disability categories in IDEA.

Second, the IEP team must determine as a result of the disability whether the child is able to progress effectively in the general education curriculum. This includes academic and nonacademic areas.

Third, the IEP team must determine if the child needs specially designed instruction to make effective progress. Specially designed instruction and/or related services means adapting the content, methodology, or delivery of instruction.

Not all students will meet all the criteria and may not be eligible for special education; however, they may be eligible for support under the Rehabilitation Act of 1973 Section 504 (i.e., a 504 plan). Evaluation teams will conduct an evaluation with a group of various school professionals. Members of the evaluation team must include parents, general education teachers (always), intervention specialists, district representatives, school psychologists, speech therapists, occupational therapists, and physical therapists.

Evaluation Teams must decide if a child is eligible for special education services under one of the 13 categories of disability outlined in the Federal education law, called Individuals with Disability Education Act (IDEA). IDEA categories of disability are quite broad in their definitions.



IDEA Disability Eligibility Categories

Autism, Deaf-Blindness, Deafness, Emotional Disturbance, Hearing Impairment, Intellectual Disabilities, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment, Traumatic Brain Injury, Visual Impairment, Developmental Delay. The developmental delay definition was expanded to include a child who is at least three years of age and less than 10 years of age, who is experiencing developmental delays and needs special education and related services.
Determining Special Education Eligibility for School-Age Children: Developmental Delay

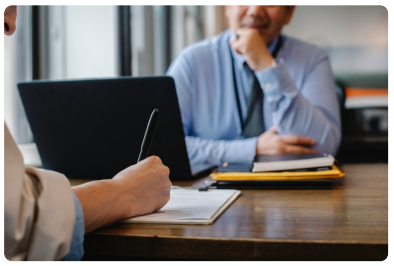
What Do I do if I disagree with the decision?
Dispute Resolution Options

Independent Educational Evaluation (IEE)

An independent educational evaluation (IEE) also is called an outside evaluation. The school district will pay for this outside evaluation only if it has already done its own evaluation of your child and you disagree with what the district found. The purpose is to find out if your child needs special education or continues to need special education. The person who evaluates your child for this outside evaluation cannot work for your child's school district. You, as a parent, have the right, at any time, to arrange and pay for an outside evaluation for your child. Once you disagree with your district's evaluation of your child and ask for an outside evaluation, your district must take one of these actions without unnecessary delay:

- The school district must tell you about where you can obtain an outside evaluation of your child on your own and inform you of the criteria necessary for the district to pay for it. Once the district agrees and you get the outside evaluation, the district must pay the cost; or

- The district must submit a request to the Ohio Department of Education's Office for Exceptional Children for a due process hearing because it disagrees with your request for an outside evaluation. This would be because the district thinks its own evaluation of your child was appropriate.



Administrative reviews are one option for conflict resolution in which parents or an agency may present a complaint to the superintendent regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE). This step is not required before filing a state complaint or a due process complaint. The school district encourages parents and other agencies to deal with conflicts as soon as significant disagreements emerge, recommends the scheduling of an administrative review, and points out some advantages of this type of review:

- It provides a quicker way of resolving disputes and can be employed quickly;
- It may produce quicker results when the focus is on educational outcomes for the child;
- It may result in a collaborative resolution that addresses the interests of families and schools and can often preserve a working relationship.

Within 20 school days of receipt of a complaint, the superintendent, or the superintendent's designee, shall conduct a review, may hold an administrative hearing, and shall notify all parties in writing of the decision.

(a) Administrative reviews are recommended but cannot be used to delay or deny an impartial due process hearing that has been requested in writing or to deny any other rights afforded under this chapter of the Administrative Code.

(b) The child's parent or educational agency other than the school district may request an opportunity to present complaints to the superintendent.
Within 20 school days of receipt of a complaint, the superintendent, or the superintendent's designee, without undue delay and at a time and place convenient to all parties, shall conduct a review, may hold an administrative hearing, and shall notify all parties in writing of the decision.

(a) Every effort should be made in the review to resolve any disagreements.

(b) All parties have the right to invite others to participate in the administrative review, including legal counsel.

If the superintendent or designee decides to conduct an administrative hearing instead of a review, he or she contacts the district's legal counsel to determine what hearing process the district should follow. The superintendent or designee conducts the administrative hearing following the process recommended by its legal counsel. The superintendent or designee notifies all parties in writing of his or her decision within 20 days of receiving the verbal or written request for an administrative review.

Ohio's Dispute Resolution Processes Information Chart, Ohio Department of Education:
https://education.ohio.gov/getattachment/Topics/Special-Education/Mediation-Complaints-and-Due-Process/Dispute_Resolution_big.jpg.aspx
http://education.ohio.gov/Topics/Special-Education/dispute-resolution

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Request Mediation

Mediation is a meeting where you, the parent, and your school agree to have a neutral, third party (a qualified and impartial mediator) come to the meeting to help you resolve disagreements about the education of your student with a disability or suspected disability. Mediation is available at no cost to you and is available any time there is a disagreement. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

If you and your school district resolve a dispute through the mediation process:

- The parties must execute a legally binding agreement that sets forth that resolution.
- All discussions that occurred during the mediation process must be documented and will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.
- The agreement must be signed by both you, the parent, and a representative of the educational agency who has the authority to bind the educational agency.
- The written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.
- No part of the mediation discussion or sessions may be electronically recorded.
- The mediator may not be called as a witness in future proceedings related to the mediation sessions.

If the mediation requires changes in the individualized education program, the individualized education program team shall be notified of the results of the mediation, and the individualized education program team will meet to make the changes to the individualized education program within **twenty (20) school days** following the mediation agreement, or as agreed to in the mediation agreement.
OECmediationfacilitation@education.ohio.gov

File a State Complaint

A complaint is a formal request to the Ohio Department of Education to investigate potential violations which have occurred no more than one year prior to the complaint being received. These potential violations must be of the Individuals with Disabilities Education Act (IDEA) or the Ohio Operating Standards for the Education of Children with Disabilities.
An organization or individual may file a signed written complaint. The party filing the complaint must forward a copy of the complaint to the school district of residence at the same time the party files the complaint with the Ohio Department of Education.

The complaint must include:

- A statement that a school district of residence has violated a requirement of Part B of the IDEA;
- The facts on which the statement is based;
- The signature and contact information for the complainant (person filing the complaint); and
- If alleging violations with respect to a specific child:
  - The name and address of the residence of the child;
  - The name of the school the child is attending;
  - In the case of a homeless child or youth, as part of the McKinney-Vento Homeless Assistance Act, available contact information for the child, and the name of the school the child is attending;
  - A description of the nature of the problem of the child, including facts relating to the problem; and
  - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

File a Due Process Complaint

The party filing a due process complaint must forward a copy of the due process complaint to the Ohio Department of Education within two years of the date the parent or agency knew or (should have known) about the alleged action that forms the basis of the due process complaint.

The due process complaint must include:

- The name of the child;
- The address of the residence of the child;
- The name of the school the child is attending;
- In the case of a homeless child or youth, as part of the McKinney-Vento Homeless Assistance Act, available contact information for the child, and the name of the school the child is attending;
- A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

- A proposed resolution of the problem to the extent known and available to the party at the time.

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party files a due process complaint that meets the requirements outlined above.

A message from The Experts

Dr. Elizabeth Barnhardt, Developmental Pediatrician:
A medical diagnosis is important so that your child can receive the appropriate care they need. For example, a medical diagnosis helps your child become eligible for appropriate behavioral support resources (like Applied Behavior Analysis therapy) or developmental supports (like Speech or Occupational therapies) and helps in making these services covered by your insurance plan. An evaluation with a physician knowledgeable about autism (like a Developmental and Behavioral Pediatrician) is also important in making sure all of your child's medical needs are met. Children with intellectual and developmental disabilities can have a number of developmental, behavioral, and medical challenges. For example, your child may be at an increased risk of medical or behavioral problems such as seizures, sleeping difficulties, Attention Deficit Hyperactivity Disorder, or constipation. In addition, genetic testing is typically recommended for children diagnosed with autism and can help parents learn more ways to support their child.

Kristen Hildebrandt, Senior Attorney, Disability Rights Ohio:
When asking your child's provider for a recommendation for a service in school (such as physical therapy or speech therapy) make sure your provider's recommendation is based on what your child needs in the school setting, not in an outpatient or clinical therapy setting. Any recommendation for school-based therapy should address what your child needs to help them benefit from the special education program provided by the school, not what the provider would recommend in a clinical setting. www.disbilityrightsohio.org

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References:

A Guide to Parents Rights in Special Education - A Guide to Parent Rights in Special Education (ohio.gov)

A Roadmap to Parent's Rights in Special Education - in progress

https://www.understood.org/en/articles/the-difference-between-a-school-identification-and-a-clinical-diagnosis

Medical diagnosis vs. Educational label -- Impact on Eligibility (peatc.org)

Administrative Reviews - Ohio | CADRE (cadreworks.org)

Federal guidance document on Section 504 Plans for all disabilities, including mental health issues, such as anxiety and depression; includes documentation for including Occupational Therapy, Physical Therapy, Speech and Language services, and Mental Health counseling services on Section 504 Plans.

Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools

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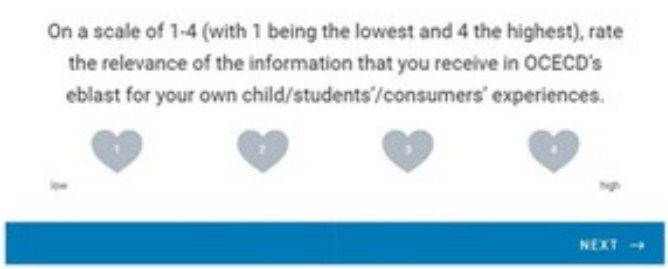
Please Take a moment to provide your feedback!



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