

A Parent's Guide to Special Education



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TABLE OF CONTENTS

INTRODUCTION AND OVERVIEW	2
EVALUATION AND ELIGIBILITY FOR SPECIAL EDUCATION SERVICES	3
INDIVIDUALIZED EDUCATION PROGRAM	7
RELATED SERVICES AND ASSISTIVE TECHNOLOGY	11
BEHAVIOR AND DISCIPLINE	13
RESOLVING DISPUTES	15
COMMON ABBREVIATIONS	20
SAMPLE LETTERS	22
RESOURCES FOR ADVOCACY ASSISTANCE	27

students, requiring that all students be taught high academic standards to prepare them for college and careers, and stressing the importance of accountability standards.

Family Educational Rights and Privacy Act (FERPA): FERPA is a federal law that protects the privacy of student educational records. The law applies to all schools that receive federal funds. FERPA gives parents certain rights with respect to their children's educational records, which transfer to the student when he or she turns 18. Parents or eligible students have the right to inspect and review the student's educational records and the right to correct inaccurate or misleading information contained in educational records. Generally, schools must have written permission from the parent or eligible student in order to release information from a student's files.

State laws and regulations: Each state receiving IDEA funds is entitled to create its own rules for implementing the law. The state can do more than federal law requires but can never do less. In Arkansas, the Arkansas Department of Education is responsible for enforcing IDEA.

EVALUATION AND ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

What is special education?

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability. Special education is a service, not a place, and can be provided in the classroom, home, hospitals, or other settings. The definition includes instruction in physical education and travel training.

What does “free appropriate public education” (FAPE) mean?

A free appropriate public education or FAPE is defined as an educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general curriculum, meets the grade-level standards established by the state, and from which the child receives some educational benefit.

To provide FAPE to a child with a disability, schools must provide the student with an education, including specialized instruction and related services that prepares the child for further education, employment, and independent living.

How do I refer my child for special education services?

The school must complete an initial evaluation before it places the child in a special education program. The parent, teacher, or other professional involved in the education of the student may refer the child for a special education evaluation. However, the school must obtain a parent's informed written consent in order to conduct the evaluation.

Can the school evaluate my child without my permission?

No. The school must obtain your written consent before conducting the evaluation.

What happens after the evaluation is completed?

After the evaluation, your child's IEP team must meet to decide whether your child is a student with a disability eligible for special education and if so, to develop an IEP. Your school district is required to give you copies of its written evaluation report before that meeting. Ask for explanations of anything you do not understand in the report.

What if I decide not to put my child in special education after the evaluation?

The parent's consent for an evaluation is not the same as consent for special education services. You will be asked to consent for services after the evaluation. It is up to you whether to put your child in a special education program or not.

What can I do if I disagree with the school's evaluation?

If you have concerns about the evaluation results or the team's program recommendations, you can request an independent educational evaluation at public expense. You must tell the school in writing that you "disagree" with its evaluation, although you do not have to explain why you disagree. We have attached a sample letter to this Guide to help you to request an independent evaluation.

Who conducts the independent evaluation?

Independent evaluations are done by qualified persons who are not employed by the school. You may ask the school how and where to get an independent evaluation or you may get the independent evaluation done by someone not recommended by the school, as long as this person is qualified to perform the evaluation.

Can the school refuse to pay for the independent evaluation?

If you ask the school to pay for the independent evaluation, the school must do so unless the school asks for a due process hearing to show its evaluation was appropriate. If you want the school to pay for the independent evaluation, the testing you get must meet the same requirements the school uses.

Is the school required to accept the findings of the independent evaluator?

The IEP team must discuss and consider the independent evaluation. The team does not, however, have to accept any or all of the evaluator's recommendations.

3 years to consider the student's need for a reevaluation. The group reviews "existing data" to decide if they need additional information to determine the student's needs.

What is existing data?

Existing data includes evaluations and information provided by the parent, current classroom-based assessments, observations, and teacher and related services providers' observations.

Who is included in the group that reviews the existing data?

The group includes the parents, IEP team members, and "other qualified professionals" as appropriate.

Does the school need my consent to conduct the reevaluation?

Yes, unless the school took "reasonable steps" to obtain your consent and you failed to respond. The school must show that it made multiple attempts to contact you, including visits to your home or workplace, and keep records of those attempts. If the school takes reasonable steps and you fail to respond, then it can conduct the reevaluation.

I think my child needs a reevaluation, but the school doesn't agree. What can I do?

As the parent, you have the right to obtain a reevaluation with new evaluations even if the school disagrees. Be sure to put your request for a reevaluation in writing. There is a sample letter attached to this guide that can help you request a reevaluation.

INDIVIDUALIZED EDUCATION PROGRAM

What is an IEP?

An individualized education program (IEP) is a written plan that describes the educational program the school will provide to meet a child's unique needs. The IEP must contain measurable annual goals in each area of need. The IEP states what special education and related services and supplemental aids and services the school will provide, and when and where those services will be provided. The IEP must consider and address the academic, developmental, and functional needs of the student. Services must be based on peer-reviewed research to the extent practicable.

Each child who receives special education and related services must have an IEP. The IEP must be designed for one student and must be a truly individualized program.

What is included in the written IEP?

In general, each IEP must include the following:

- (1) A statement of the student's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum;
- (2) Measurable annual goals;
- (3) A statement of specific special education services, related services, supplementary aids and services, and program modifications and supports for school personnel;
- (4) An explanation of the extent, if any, the child will not participate in regular education classes;
- (5) Date for the initiation and the anticipated duration, frequency, and location of the services and modifications included in the IEP;
- (6) Modifications in the administration of state or district-wide tests;
- (7) Objective criteria for determining whether the measurable goals are being achieved; and
- (8) A description of the type of placement needed to implement the IEP in the least restrictive environment.

When does my child's IEP take effect?

The school must begin providing the services in the IEP as soon as reasonably possible. The school should give a parent a prior written notice that will indicate when services will begin.

What does it mean when I sign my child's IEP?

By signing the IEP, you are telling the school that you agree with the program and services identified in the IEP and that you consent to those services being provided as written. Services will not begin until a parent signs the first IEP. After the first IEP meeting, you may be asked to sign the IEP to show that you agree with the services described in the IEP. If you do not agree with the IEP, you can sign that you attended the meeting and note in writing that you disagree with the services in the IEP.

What are transition services?

Transition services are those services and activities provided to students that

the “placement decision.” Parents must be a part of any decision regarding the child’s educational placement.

How are placement decisions made?

Placement decisions must be made at least once every year and based on the student's individual needs. The decision is based on evaluation information and not on disability label or staff convenience. We presume that the child will attend his or her neighborhood school. If the neighborhood school is not appropriate, then the placement must be as close to home as possible.

What does Least Restrictive Environment (LRE) mean?

The school must educate students with disabilities in the least restrictive environment (LRE). This means that the student must be placed in the setting that puts the fewest limits on his or her opportunities to be educated with students who do not have disabilities. If the IEP team places the child somewhere other than the regular classroom, the IEP must specify why a more restrictive placement is needed.

What does the school have to provide so that my child can be successful in the regular education classroom?

In order to be successful in the LRE, students are to be provided supplementary aids and services. This may include assistive technology (AT) or staff assistance that compensates for limits in functioning and allows students to perform educational and social activities in a general education environment.

Who is responsible for implementing my child’s IEP?

The school district where you live is responsible for ensuring that the services in your child’s IEP are provided. Those services are not based on what personnel or equipment the school district already has on site. The school district and your child’s school must provide the services and supports as written in your child’s IEP.

RELATED SERVICES & ASSISTIVE TECHNOLOGY

What are related services?

Related services are support services a student requires in order to benefit from his or her special education program. The term includes, but is not limited to, transportation, speech-language pathology, audiology, psychological services, physical and occupational therapy, recreation, social work services, orientation and mobility services, counseling, medical services for diagnostic purposes, health and nursing services, and parent counseling and training.

What is assistive technology (AT)?

An AT device is any item, piece of equipment or product used to increase, maintain, or improve the functioning of a student with a disability. AT devices for students with disabilities include those used for seating and positioning, mobility, augmentative communication, computer access and instruction, environmental control, adaptive toys and games, visual and listening aids, and self-care.

AT services (including training) assist students with disabilities in the selection, acquisition, or use of an AT device. An AT evaluation will determine if an AT device and/or service is necessary to ensure the student will benefit from special education services.

Who decides if my child needs assistive technology?

The IEP team must consider whether a student requires AT services and services. These decisions must be documented in the IEP. These decisions will be based on written reports from evaluations, as well as information provided by the parent. The AT devices and services must be written into the IEP, including the training needed for the student, school personnel and family.

Who pays for the assistive technology device?

AT devices must be provided at no cost to the parents. The school must pay for the device or find a way to ensure that a child has access to needed AT.

Can my child take the assistive technology device home with her after school hours?

The school may permit the child to use school purchased AT devices at home or in other settings if the IEP team determines that the child needs access to those devices in non-school settings in order to progress.

Can the school hold me financially responsible if the device is damaged?

The school can hold you financially responsible only if the damage to the device was intentional. Parents cannot be charged for normal use or general wear and tear.

BEHAVIOR AND DISCIPLINE

My child exhibits inappropriate behaviors that interfere with his or her learning. Does the school have a responsibility to help?

Yes. If your child's behavior interferes with his or her learning or is disruptive to other students, the IEP must address those behaviors. The IEP team must identify

student must be returned to the placement he or she was in when the behavior occurred, unless the parent agrees the student should go to another placement as part of a modification of the BIP.

What happens if the behavior is NOT related to the disability?

If the behavior is found NOT to be related to the disability, the school is entitled to discipline the student just like any other student without a disability. However, services must continue. The IEP team must meet to place the student. Students in disciplinary settings are still entitled to special education services as necessary to access the general curriculum progress toward his or her IEP goals.

My child got into an argument with another student on the playground. Neither child was hurt. The school says it can remove my child for 45 days for fighting. Is this true?

No. The school can remove a student for up to 45 school days for offenses involving drugs, weapons, and the infliction of "serious bodily injury to another person," regardless of whether the offense was a manifestation of the student's disability.

How do I challenge the school's decision to discipline my child?

You may file a due process complaint and request for hearing. In discipline cases, the student is entitled to an expedited hearing within 20 school days after the hearing is requested. The hearing officer must issue a decision within 10 school days. Unless the team found the student's conduct to be a manifestation of the disability, the student will remain in the disciplinary setting pending the hearing decision, or the end of his or her disciplinary placement.

You can find a sample form for filing a due process complaint and request for expedited hearing on the ADE Special Education Unit website. We recommend that you consult with an attorney if you are considering a due process complaint.

RESOLVING DISPUTES

I feel overwhelmed by the IEP process. Do I have any rights?

YES! The IDEA contains a system of procedural safeguards designed to protect the rights of children with disabilities and their parents. Procedural safeguards include the right to participate in all meetings, to examine all educational records, and to obtain an independent educational evaluation of the child.

What is Prior Written Notice?

The school must give prior written notice to parents when the school proposes to initiate

What do I include in my state complaint?

Your complaint must be in writing and should contain specific information about the violation. Your complaint should include your name, the name of your child, the name of the school she or he attends, the school district, your address, and a phone number where the agency can reach you during the day. Complaints must be signed, and a copy of the complaint must be sent to the local school district.

You can find a sample form for filing a state complaint on the ADE Special Education Unit website.

Where do I send my complaint?

If your child goes to a public or charter school in Arkansas, send your complaint to:

Arkansas Department of Education Special Education Unit
1401 West Capitol Ave.
Victory Building, Ste. 450
Little Rock, AR 72201
501-682-4221, TTY: 501-682-4222
<https://arksped.k12.ar.us>

What happens if the ADE finds the school to be out of compliance?

If the investigation shows the school district to be out of compliance, the ADE may require corrective action. The investigation report must set forth the corrective action the school is to take, along with timelines for correction.

The ADE may also order the school to provide your child with make-up services, referred to as “compensatory education.”

What is mediation?

Mediation is an informal and voluntary process conducted by an impartial mediator. There is no cost to either the parent or the school. In Arkansas, attorneys are not currently allowed at special education mediations. Because mediation is voluntary, both the parent and the school must agree to attend. The ADE will assign a mediator, and the mediation session will be held at a mutually agreed upon date and time.

Mediators try to help people resolve disputes without litigation. The mediator cannot order either side to do anything. The mediator is there to help you communicate and, hopefully, reach an agreement. If mediation is successful, the mediator writes up the agreement that you and the school officials sign. That agreement is a legally binding document. Discussions at mediation are confidential and cannot be used as evidence in other proceedings.

of time has been ordered, the hearing officer's decision is due 45 days from the date after complying with the resolution meeting requirement. The timeline is much shorter for an expedited due process hearing as discussed above.

If a resolution is reached, the parents and the school must sign a legally binding agreement. The agreement is enforceable in state or federal court. Either the school or the parent can withdraw their agreement within three days of signing it.

How long do I have to file my due process complaint?

A request for a due process hearing must be filed within two years of the date the parent knew, or should have known, about the action that forms the basis of the complaint. The timeline does not apply if the school misrepresented to the parent that it had resolved the problem, or if the school withheld information from the parent that it is required to provide, such as failing to provide written notice or a procedural safeguards notice.

Where will my child go to school while the due process and appeals are pending?

If you choose to challenge the school's evaluation, program or placement at a due process hearing, the IDEA requires the student to remain in the current placement during the hearings and appeals. This is often referred to as the "stay put" provision of the law. In discipline cases where a student has already been removed from the classroom for an interim period, the "stay put" provisions do not apply. You may be entitled to an expedited hearing.

Can the school request a due process hearing?

Yes. Either the parent or the school may request a due process hearing.

MD	Multiple Disabilities
MR	Mental Retardation
MS	Multiple Sclerosis
NCLB	No Child Left Behind
OCR	Office of Civil Rights
OJT	On-the-Job Training
OI	Orthopedic Impairment
OHI	Other Health Impairment
OSEP	Office of Special Education
OSERS	Office of Special Education & Rehabilitative Services
OT	Occupational Therapy
PDD	Pervasive Developmental Delay
PT	Physical Therapy
PTA	Physical Therapy Assistant
RSA	Rehabilitation Services Administration
RTI	Response to Intervention
SEA	State Education Agency
SED	Seriously Emotional Disturbed
SLD	Specific Learning Disability
S/LI	Speech/Language Impairment
SSI	Supplemental Security Income
TBI	Traumatic Brain Injury
VI	Visual Impairment
VR	Vocational Rehabilitation

SAMPLE LETTER #2

REQUEST FOR REEVALUATION (please keep a copy for yourself)

Date

Special Education Director
School District
Address
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am writing to request that the school system conduct a complete reevaluation of my child. I believe a reevaluation is necessary in order to obtain a better understanding of my child's current academic and functional abilities, and to draft an appropriate educational program.

I look forward to hearing from you soon. I can be reached at (include contact information).

Sincerely,

Parent's Signature

SAMPLE LETTER #4

REQUEST FOR IEP MEETING (please keep a copy for yourself)

Date

Special Education Director
School District
Address
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am requesting that an IEP meeting be held as soon as possible to review and, if necessary, revise my child's IEP. Please contact me at your earliest convenience so that the meeting can be scheduled at a mutually agreeable date and time.

I look forward to hearing from you soon. I can be reached at (include contact information).

Sincerely,

Parent's Signature

RESOURCES FOR ADVOCACY ASSISTANCE

Disability Rights Arkansas, Inc.

400 West Capitol Ave., Suite 1200
Little Rock, AR 72201
(501) 296-1775
(800) 482-1174

The Center for Exceptional Families

1702 Stone Street, Suite A
Jonesboro, AR 72401
(870) 336-3012
(888) 360-9654

Northwest Arkansas Community Parent Resource Center

614 E. Emma, Suite 219
Springdale, AR 72764
(479) 927-4100
(800) 748-9768

Medical-Legal Partnership at Arkansas Children's Hospital

One Children's Way, Slot 695
Little Rock, AR 72202
(501) 364-1541

Legal Aid of Arkansas

(800) 952-9243
www.arlegalaid.org