

# ***A Parents' Guide to Special Education in North Carolina***



***By Jane Wettach  
Children's Law Clinic  
Duke Law School  
Durham, NC***

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Children's Law Clinic  
Duke Law School  
Box 90360  
Durham, NC 27707  
[www.childedlaw.org](http://www.childedlaw.org)  
<https://law.duke.edu/childedlaw/>

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-Jane Wettach

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## Introduction

Often, after parents learn that their child has a disability, there is a period of grief. That grief can be accompanied by sadness, denial, and anger, but for most parents, there is ultimately acceptance. As the child grows and the bond between the parents and child deepens, parents see their child's strengths alongside their disability and become fierce advocates for their child. They go about the business of learning everything they can about their child's challenges and everything they can about how to help their child grow and learn and experience a full and satisfying life.

If you are one of those parents, this Guide is for you. It will give you the information and tools you need to be an informed and effective advocate for your child during your child's years in school, from preschool through high school. The focus of the Guide is the federal special education law known as the Individuals with Disabilities Education Act (IDEA) that promises each child with a disability a "free, appropriate, public education." This Guide will help parents make sure their child is able reap the benefit of that promise.

The Guide is divided into four parts. It is not designed to be read from beginning to end; instead it is designed so that a reader can get quickly to the part that will be most helpful at any given time. The first part contains three chapters that provide an overview of the special education law and how it is implemented. It will give you an introduction to the basic principles of the law and acquaint you with the terms that are used. The second part, with five chapters, delves into the details of the process, from the evaluation to determine eligibility through IEP meetings, discipline, private schools, and dispute resolution. The third part is "Frequently Asked Questions." This part includes short answers to all kinds of special education questions. It is subdivided by the major special education themes to help you find the answer to the specific question you have. Web users of this Guide will find the questions answered orally by law students as well. The fourth part contains some sample letters, a glossary of terms and acronyms, and a listing of other resources.

We hope that this Guide is useful for parents, allowing them to be even better advocates for their children. Send us your feedback!

## PART I

### CHAPTER 1 • A Little Bit of History and a Big IDEA

Children with disabilities have not always had the chance to get a public education. Many disabled children were sent away from their homes and communities to special schools, such as schools for the deaf, blind, or mentally impaired. Other children were told they couldn't come to school because they were seen as too different from the other children or just too hard to teach. For example, for many years, it was against the law for parents in North Carolina to try to enroll their child in school if the child had been declared "uneducable." However, in the 1970's, several landmark court cases began to change things. These cases said that children with disabilities have the same rights to a public education as children without disabilities. These cases also gave parents a way to challenge the school districts if the schools tried to prevent their disabled children from going to public school.

*The federal special education law says that children with disabilities have the right to a free, appropriate public education. Under this law, most children have the right to attend their neighborhood school and interact with the student body there.*

Then in 1975, Congress passed a law now known as the Individuals with Disabilities Education Act (IDEA). The IDEA says that children with disabilities have the right to a free, appropriate public education. This means they cannot be turned away from public school. The law also says

that children with disabilities should be taught in regular neighborhood schools, in regular classrooms, to the extent possible. In other words, children with disabilities should typically get the support they need without being sent to special schools. The law says that each child with a disability should have an individualized program so that his disabilities are addressed with just the right set of educational services and supports so the child can learn and make progress despite his disability. Finally, the law gives parents the right to participate in the decision-making about their child's educational programming, and gives them some tools to dispute decisions they disagree with.

As a result of the IDEA, each state gets some federal money to help provide special education to disabled children. In exchange for the money, school districts have to follow the requirements of the IDEA. It's the job of the state education department (in North Carolina, that is the Department of Public Instruction (DPI)) to distribute the

money to school districts, which then hire teachers and pay for the services needed. The state department also has the job of making sure that each school district (and each public charter school) follows the law and provides a free, appropriate public education to each child with a disability.

## Special Education: The Big Picture

As a result of the way the IDEA is written, the special education process has become enormously complicated, with lots of special vocabulary and confusing processes. Parents of children with disabilities (and even teachers) can easily become overwhelmed by all the complexities. The following questions can help clarify some of the “big picture” ideas that will be helpful for you to understand. When you don’t know how to think about a special education problem, come back to these questions to see if they help.

### What *is* Special Education?

Special education is an approach to teaching children with disabilities that takes into account the barriers those children have to learning in a more typical way. Special education can include changes to the way material is taught, changes to the materials used in the classroom, specialized lessons, and other supports that target a disabled child’s unique way of learning and unique needs. The plan for each child’s special education program is included in a written document, known as an Individualized Education Program (IEP).

### Who Should Get Special Education?

To know if a child should get special education, answer these three questions:

- 1) Does the child have a disability?
- 2) Does the child’s disability get in the way of successful learning?
- 3) Does the child need some kind of special education, different from what is offered to the other children, in order to make good progress?

If the answer to all three questions is yes, then the child should get special education.

*To know if a child should get special education, answer these three questions:*

*1) Does the child have a disability?*

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*3) Does the child need some kind of special education, different from what is offered to the other children, in order to make good progress?*

*If the answer to all three questions is yes, then the child should get special education.*

### Where is Special Education Provided?

Special education can be provided in lots of different environments. Most of the time, it is provided in the child's assigned public school in a regular classroom. For some children, it's too hard to learn in a regular classroom, even if the child gets lots of support there. For those children, special education can be provided in separate classrooms or even, on a very few occasions, in separate schools.

### How Can I, as a Parent, Know Whether My Child is Getting the Right Special Education?

Look for progress. Look for learning. If your child knows more and can do more things at the end of the school year than he could do at the beginning, that's progress. When your child is moving along, both on things like reading and math, and on things like being able to communicate and do other things children need to do to become independent, that's progress. If your child is making progress, then your child is likely getting the right special education.

*Parents should receive a quarterly progress report, in addition to a regular report card, to let them know how well their child is accomplishing the IEP goals. They should look for details on progress, not just a checked box.*

You should receive a progress report at least every quarter that lets you know how your child is doing on the IEP goals. This is a separate report from the usual report card that all children get. If all you get on the progress report is a check next to a box saying "making progress," follow up with the teacher for more specific information.

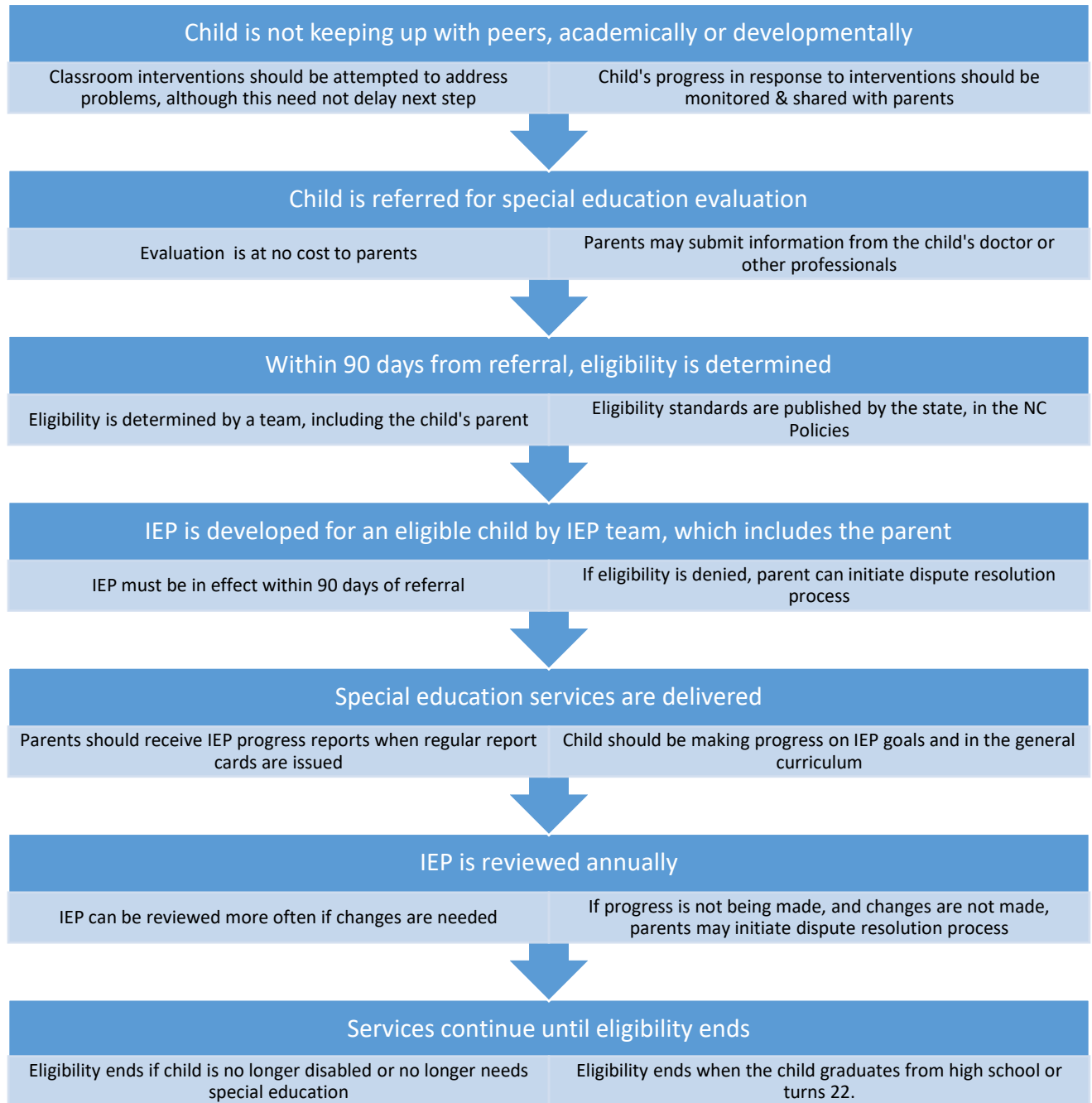
### What are the Steps for Getting Special Education?

The process of getting special education for a child includes seven main steps. Here they are:

1. **Referral** – A teacher or parent notices that a child is struggling in school and may benefit from special education. That person writes a brief letter to the principal to ask that the child be evaluated for special education. This written request is called a "referral." Only parents or school staff can make an official referral.
2. **Evaluation** – A child is tested, or evaluated, to identify her strengths, weaknesses, and needs.

3. **Eligibility decision** – After the testing, a group, including the parent, uses the evaluation and other information to determine if a child is eligible for special education.
4. **Development of special education program** – An individualized education program (known as an IEP) is developed by a team to set goals and give structure to the special education that will be provided to an eligible child.
5. **Delivery of special education services** – The child receives special education and related services as described on her IEP.
6. **Annual review** – Once a year, the child's IEP team reviews and updates the special education program. This continues until the child is found to no longer need special education, or until the child graduates from high school. Additional meetings between annual reviews can be scheduled to make necessary interim changes to the child's IEP.
7. **Reevaluation** – At least every three years, each eligible child is reevaluated. Reevaluation has two purposes. First, it helps the IEP team determine if a child still qualifies for special education. Second, if the child still qualifies, it helps the IEP team with planning for future educational needs.

## Special education process





## PART I

### CHAPTER 2 • The Basic Promise of the IDEA

The Individuals with Disabilities Education Act (IDEA) makes a basic promise. The promise is this: Each child with a disability is entitled to a free, appropriate public education pursuant to an individualized education program in the least restrictive environment. Each of those phrases has a definition, and then lots of specialized concepts within it that need explanation. The most important legal concepts and the terminology that goes along with them are explained here.

*Each **child with a disability** is entitled to a **free, appropriate public education** pursuant to an **individualized education program** in the **least restrictive environment**.*

#### A Child with a Disability

A child with a disability who is covered by the IDEA must be age 3 – 21 and fall into one of 14 disability categories. If a child fits into one of the 14 categories, that child must also meet two additional requirements that are the same for all the categories. The “universal” requirements are 1) the disability must “have an adverse effect on educational performance” (in other words, it must get in the way of the child’s ability to learn) and 2) the child must “require specially designed instruction” (in other words, instruction that differs from the instruction typically offered in a regular classroom).

#### Age

Special education can start as early as when the child is 3 years old and can continue until he is 22. Some 3 and 4 year olds may qualify for special education preschool. Even if a child is not enrolled in school at 3 years old, she may still qualify for some special education services, such as speech or occupational therapy. Eligibility ends when a student no longer meets the other requirements, or when he graduates from high school with a standard diploma. If a student has not graduated from high school, he can remain eligible for services and continue in school until the end of the school year in which he turns 22.

### Categories of Disability

Each disability has a detailed definition in the [North Carolina Policies Governing Services for Children with Disabilities](#), Section NC 1503-2.5(d), which is published by the NC Department of Public Instruction, Exceptional Children Division. The disability categories are the following:

- Autism Spectrum Disorder
- Deaf-blindness
- Deafness
- Developmental Delay
- Emotional Disability
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech Language Impairment
- Traumatic Brain Injury
- Visual Impairment

The most common category is “specific learning disability.” This means a child has trouble with a specific ability, such as the ability to read, but it is not because the child has low intelligence. The next most common category is “other health impairment.” This category includes children with many health conditions, such as Attention Deficit/Hyperactivity Disorder (ADHD), leukemia, diabetes, and asthma, that get in the way of the child’s progress in school.

The “speech-language impairment” category includes children who have trouble making certain sounds when speaking, or children who have trouble understanding and communicating with language.

The “developmental delay” category is only for children aged 3 through 7. When a child turns 8, he has to qualify under a different category to continue to get special education services.

### Adverse Effect

The law does not define what an “adverse effect” is, but generally it means the disability gets in the way of progress at school. Often, an adverse effect is seen when a child has failing grades, is far below grade level, or is doing poorly on his end-of-grade tests (EOGs). A child does not need to fail a grade for her disability to be considered to have an adverse effect, but there must be some indication that the disability is interfering with learning.

*For a child to qualify for special education, his or her disability must have “an adverse effect” on educational performance.*

### Requires Specialized Instruction

A child needs specialized instruction when the child cannot learn the material without instruction that differs from the typical instruction. A child may need specialized instruction even if he is passing. Children with passing grades might need specialized instruction, for example, if they are only getting by because of tremendous support at home or because most of the grade is based on effort and participation rather than mastering the subject. A child can be eligible if she needs specialized instruction in just one specific area or in several areas.

### Evaluation

A child must be evaluated before a decision about eligibility can be decided. An evaluation is done by a school psychologist, who gives the child certain tests to get a clearer sense of the child’s learning strengths and weaknesses. Testing can also be done about emotional and behavioral conditions that may be affecting learning. The school district must arrange and pay for the initial evaluation. For more information on evaluations, see the [Understanding Evaluations and Educational Testing](#) section of this Guide.

### The Initial Eligibility Decision

The decision about whether a child is “a child with a disability” entitled to special education is made by a group of “qualified professionals” (such as the child’s teacher, a psychologist, and other special education professionals) and the parent. The group meets following the evaluation. The evaluation results will be reviewed and compared to the definitions and criteria found in the [NC Policies](#)

[Governing Children with Disabilities](#). If the group decides the child is eligible, then an Individualized Education Program (IEP) will be written for the child. If the team cannot come to a unanimous decision about eligibility, then the member of the team representing the LEA (local educational agency, which is the school district or charter school organization) makes the final call. No matter the decision, the parent will get a written notice of the decision. The parent can challenge the decision through one of the dispute resolution mechanisms. These are more fully described in the [IDEA Dispute Resolution](#) chapter of this Guide.

### Termination of Eligibility

While some children will continue to need special education throughout their time in school, others will become ineligible at some point. Before an IEP team can determine that the child is no longer eligible, a reevaluation must take place. A reevaluation is much like an initial evaluation. It consists of individual tests given by a school psychologist that will measure a child's strengths and weaknesses. The results of the reevaluation must support the decision that the child no longer has a disability that affects learning and/or no longer needs specially designed instruction. Like the initial eligibility decision, this decision is made by a team including the parents and the "qualified professionals." And as with the decision about initial eligibility, parents can challenge the decision that the child no longer qualifies for special education by using one of the dispute resolution tools if they disagree that the child no longer qualifies for special education. These are more fully described in the [IDEA Dispute Resolution](#) chapter of this Guide.

### A Free, Appropriate Public Education

Also known as FAPE, this term encompasses the essence of what must be provided to each child eligible for special education. The instruction and services are provided without charge to the parents.

*A FAPE includes specially designed instruction and related services that allow a child with a disability to make reasonable educational progress.*

### Specially Designed Instruction

"Specially designed instruction" is instruction that is tailored to meet the needs of a child with a disability. Sometimes, a child's disability impacts his learning so much that the *content* of the material must be modified so the child can learn the

important concepts. Other times, the content is the same, but the *method used by the teacher* to deliver the lessons is different. Specially designed instruction is provided by a teacher who is trained as a special education teacher and knowledgeable about how to structure and deliver lessons to help children learn despite their disabilities. Unless a child has been exempted from taking the required state tests (the End-of-Grade tests), the specialized instruction will still be focused on the same educational standards that are in place for all students.

### Related Services

A FAPE also includes “related services” if they are needed. Related services are supportive services that help a disabled child benefit from special education.

Some examples of related services are:

- Speech-Language Therapy
- Audiology Services
- Interpreting Services
- Psychological Services
- Physical Therapy
- Occupational Therapy
- Therapeutic Recreation
- Counseling Services
- Rehabilitation Counseling
- Orientation and Mobility Services
- School Health and Nurse Services
- Social Work Services
- Parent Counseling and Training
- Transportation
- Early Identification and Assessment of Disabilities in Children
- Medical Services (for diagnostic and evaluation purposes only).

### Appropriate Education

An appropriate education is one that takes into account the child’s disability and is tailored to meet the child’s educational needs that are a result of the disability. While it may not be the best possible education, or one that maximizes the child’s potential, it must be ambitious and challenging in light of the child’s circumstances. While an appropriate education will allow most children to meet grade-level standards and move from grade to grade with their peers, that might

*An “appropriate” education is not the best possible education, but is one that is challenging and allows the child to make reasonable progress.*

not be the right standard for every child. What is appropriate for one child will not necessarily be appropriate for another. A few examples might help here. The U.S. Supreme Court first addressed the requirement of an

appropriate education in 1982 in a case called *Board of Education v. Rowley*. (The v. in this case name and others that follows stands for versus.) The case involved a deaf student, Amy, whose parents believed that to get an appropriate education, Amy needed a sign-language interpreter. Without an interpreter, her parents argued, Amy was not achieving her potential. The Supreme Court rejected this argument. The Court stated that the IDEA only requires that a school provide educational services that give “educational benefit” to a student; it does not require that the services “maximize” a child’s potential. Because Amy, who was a good lip reader and had other support, was making above-average grades and was moving from grade-to-grade without an interpreter, Amy was found to be receiving an appropriate education.

The Supreme Court again addressed the concept of an appropriate education in 2017 in a case called *Endrew F. v. Douglas Co.* This case involved an autistic student who had been receiving special education since preschool. By the fourth grade, his parents were dissatisfied, believing his continued disruptive behaviors were interfering with his progress and the IEP was not offering a FAPE. The school district proposed a new IEP that was essentially like the previous IEPs. His parents rejected the proposed IEP and filed a due process complaint to challenge it. The school district defended its IEP, saying the school’s plan had allowed Endrew to make at least minimal progress. The Court ruled for the parents, saying an appropriate education is one that allows the child to make progress appropriate in light of his circumstances. Although not every child will achieve at grade-level, progress must be more than just a minimal amount; each IEP must be “appropriately ambitious” so that the child has the chance to meet challenging objectives.

### Public Education

While nearly all special education is delivered in a public school environment, that isn’t required. The term “public education” means that the special education and related services must be supervised by the public school system. If

the school district does not have a program that meets a child's needs, it must pay for a private program that meets the child's needs and allows the child to make reasonable progress. Even though the child is receiving his education in a private school, the child's program will be monitored by the public school district to assure that it continues to be appropriate and meets the child's needs.

### Individualized Educational Program (IEP)

The Individualized Education Program, or IEP, is a written statement for each special education student that outlines that student's special education program. It is developed by a team, including the child's parents and teachers, to guide the teachers through the year. Because each child with a disability has unique strengths, weaknesses, and needs, the IEP must be *individualized* to that student. Each IEP must be reviewed and updated by the IEP Team at least once a year.

*The Individualized Education Program, or IEP, is a written statement for each special education student that outlines that student's special education program.*

Some of the most important parts of the IEP are the following:

- **Parent concerns.** Parents may state what they feel needs to be accomplished by the IEP.
- **Present levels of academic achievement and functional performance.** This is a description of what the child can do and the areas where the child struggles. When describing what the child can do and where the child struggles (i.e., the present levels of achievement), the team should look to data and test scores to give an objective picture of the child's academic levels. The statement should also describe how the child's disability affects his ability to participate in the standard curriculum.
- **Annual goals.** The goals should be in the areas where the child struggles, and be concrete enough to be measured. Academic goals are usually in reading, writing, or math. Functional goals can relate to behavior, communication, organization and other non-academic skills. The student's starting place for each goal should be included in the present level of performance.
- **Measurement tools.** The IEP must include how the student's progress on the goals will be measured and how often the parent will receive progress reports on the child's progress on the IEP goals.

- **Special education services.** The IEP should state what special education services will be provided, how much time will be devoted to special education, what related services will be provided, and how often the child will receive the related services.
- **Placement.** This is the setting in which the child will be provided special education, such as the regular classroom or a separate classroom.
- **Accommodations.** These are the ways in which aspects of the regular classroom, such as where the child should sit, will be changed to assist the child to learn better.
- **Modifications.** These are changes to assignments or other materials designed to allow the child to learn the material more successfully.
- **Testing conditions.** This describes how the child will be tested, such as being in a separate room or having the test read aloud. If the child will not take regular tests, the reason must be stated.
- **Transition services.** These are services provided if the child is 16 or older. They should be designed to make sure the child has the skills he needs when he leaves high school. Depending on the child, transition services can relate to further education, working, or living independently.

### IEP Team

As the name suggests, the IEP is developed by the IEP team. The IEP team can have a variety of people, but it must have:

- the parent(s) of the child;
- at least one of the child's special education teachers;
- at least one of the child's regular education teachers, if the child participates in regular education;
- a representative of the school district who can make binding decisions about services and resources (often called the LEA representative, because that person represents the Local Education Agency, which is the school district or charter school organization); and
- someone who can interpret the results of the evaluations, and what those results mean in terms of instruction (this can be one of the individuals listed above).

Others who may be members of the team include providers of services (such as a speech or occupational therapist), school administrators, and other special education staff. The parents may bring an advocate, attorney, or someone with special knowledge of the child. Depending on age and disability, the child may



participate. The parent can agree to excuse required team members if everyone agrees the person is not needed.

### Parent/Surrogate Parent

Under the IDEA a child's "parent" is the adult in a child's life who can make decisions about the child's education.

There are several people who can be a child's parent for educational purposes:

- A child's biological or adoptive parent;
- A legal guardian (unless the legal guardian is the Department of Social Services);
- A person who the child lives with and acts in the place of an adoptive or biological parent, such as a stepparent, grandparent, or foster parent;
- A person who is assigned to be the child's "surrogate parent." A "surrogate parent" is described in more detail below.

Parents have many rights under the special education law, including the following:

- The right to attend all meetings about the evaluation, special education, or discipline of their child;
- The right to be consulted and provide consent before the school district can evaluate their child or provide special education services to her;
- The right to help develop the child's IEP;
- The right to request that an independent evaluation be conducted if they disagree with the school's evaluation; and
- The right to challenge decisions of the IEP team through various [dispute resolution mechanisms](#).

When a child does not have a parent or legal guardian to participate in the IEP process, the school district is required to appoint someone to act as the child's parent. This is called a "surrogate parent." If a child is a ward of the state, the judge overseeing the child's care should appoint a surrogate parent. The surrogate parent cannot have any interests that conflict with the child's interests. People who work for the state, the local Department of Social Services, the school district, or any agency providing services to the child cannot serve as a surrogate parent. Thus, a "therapeutic foster parent" cannot serve as the surrogate parent (though a traditional foster parent can).

The surrogate parent must understand special education and should become familiar with the child and his special education needs well enough to be the child's advocate. The person appointed as surrogate parent has all of the same rights and responsibilities as a "parent" under the IDEA.

### IEP Meetings

The IEP team for each child must meet after the child is first determined to be eligible for special education services in order to develop the initial IEP. After that, the IEP Team should meet as needed, but at least once a year.

Before the team meets, the parent must get reasonable notice of the date and time of the meeting. Ideally, the meeting will be scheduled at a "mutually agreed upon time and place." If the school has tried to notify the parent of the meeting, but is unable to reach the parent, the IEP meeting can take place without a parent.

### Least Restrictive Environment (LRE)

The least restrictive environment, or LRE, is the school setting that gives a child with disabilities the most chance to be with nondisabled children. A "restrictive" environment is one that is separate from the regular student body. A child is in the least restrictive environment when she is with children who are not disabled for as much of the school day as possible. If a child is unable to learn and make reasonable progress in a regular classroom, despite special education support in that classroom, then the school may separate her from the regular classroom for some or all of the school day to receive more specialized services. A child can also be removed from the regular classroom if his behavior disrupts the classroom so much that other students can't learn.

*A "restrictive" environment is one that is separate from the regular student body. A child is in the least restrictive environment when he or she is with children who are not disabled for as much of the school day as possible.*

The "least restrictive environment" is decided by the IEP team. Before the IEP team decides to remove a child from the regular classroom, the team must consider whether the problems can be addressed with "supplemental aids and supports" in the regular classroom. That means that school districts must first try supporting the child in the regular classroom before moving him to a more restrictive environment.

*A school should try to support every child in the regular classroom before deciding he should be taught in a separate classroom with all disabled children.*

In rare cases, the least restrictive environment is in a special school, which can be a day school or a boarding school, or can even be in a hospital or at home. These settings are used in very rare situations when the student is unable to learn and make progress in a typical public school.

### LRE decision-making

Parents and school staff often disagree about what is the least restrictive environment for a child. Here is how one court sorted out a fairly typical disagreement: In the case of *Daniel R.R. v. State Board of Education* (5<sup>th</sup> Circuit Court of Appeals, 1989), the parents of 6-year-old Daniel, who had Down Syndrome, wanted their son to be in a regular classroom with non-disabled preschool students for half of his school day. The school initially agreed, but then found that Daniel was unable to participate in the program without constant supervision and could not master any of the skills of the program. As a result, the IEP team concluded that Daniel could only be served in the special education classroom. Daniel's interaction with nondisabled peers was limited to lunch and recess a few times a week. The Fifth Circuit Court of Appeals agreed with the school staff that the separate special education classroom was the "least restrictive environment" for Daniel. In reaching this decision, the court asked two questions:

- 1) Could the school satisfactorily educate Daniel in the regular classroom with the use of supplemental aids and services?
- 2) If not, had the school placed the child with his non-disabled peers as much as possible?

Based on the facts in Daniel's case, the court found that the school could not satisfactorily educate Daniel in the regular classroom. Even with the use of supports and aids, Daniel was unable to make educational progress in a regular classroom. The teacher was not required to modify the curriculum "beyond recognition" for Daniel. Therefore, a separate, special education classroom was the least restrictive environment for him.

In another case, however, the court ruled that the school had not done what it should have before placing a child to a segregated environment in which all the

children were disabled. In the case of *Oberti v. Board of Education* (Third Circuit Court of Appeals, 1993), the parents of a kindergartner with Down Syndrome objected to the school district's unwillingness to consider placing their son in a regular classroom. The court found that the child needed to have the chance to be a regular classroom with appropriate supports, such as a curriculum plan, a behavior management plan, and special education support to the regular teacher. Without having tried these supplemental aids and services, the school district was not permitted to sequester the disabled student in a segregated classroom without opportunities to interact with typical peers.

## PART I

### CHAPTER 3 • Special Education Terms and Concepts

The special education world is full of technical terms and concepts. Learning the definitions is at least half the battle. Here are explanations for some of the specialized terms and concepts parents will hear at meetings and in conversations with special education staff.

#### Early Intervention/Infant-Toddler Program

Even before the age of 3, children with disabilities can be eligible for special services designed to address those disabilities. The Early Intervention Program provides services to children, from birth to age 3, who have a disability or are at risk of developmental delay. This is also called the Infant-Toddler Program (ITP). In North Carolina, Children's Developmental Services Agencies (CDSA) oversee early intervention services. A broad

*The Early Intervention Program provides services to children, from birth to age three, who have a disability or are at risk of developmental delay.*

range of services, from assessment to therapies, is available to children and their families. The assessments are free; the services themselves are usually paid for through either Medicaid or private insurance.

Most pediatrician's offices are knowledgeable about the ITP and can refer a child to the nearest CDSA office. Parents can also contact

the CDSA directly. There are 16 CDSA offices in the state. Once a child has been referred, the CDSA will evaluate the child within 45 days to determine if the child qualifies and what services the child needs to help her develop. A "service coordinator" will work with the family. Once the CDSA has determined that a child is eligible for ITP, an Individualized Family Service Plan (IFSP) will be developed for the family.

The IFSP should describe how a family and the ITP team will address the child's developmental needs. Services may include nursing services, occupational therapy, family counseling, assistive technology, and much more. The ITP team should review the IFSP document every six months. Here's more information on [North Carolina's Early Intervention Program](#).

### Response to Intervention/Multi-Tiered Systems of Support

Public school teachers use a variety of strategies in the regular classroom to address the differing learning issues of children. Sometimes these strategies are called “interventions” or “systems of support” and may be referred to as “MTSS” (Multi-Tiered Systems of Support) or “RtI” (Response to Intervention). The idea behind these strategies is that many struggling students aren’t “disabled,” but they do need extra support or a different type of instruction to get over a hump in their learning. If the extra interventions or supports are successful, the child will not need special education.

Especially when a child is struggling in reading, writing, or math, teachers will often try classroom interventions before a child is evaluated for special education. The teacher will structure the program of interventions to target the problem areas and keep good records of the child’s progress. If the child doesn’t show progress after about six or eight weeks of interventions, then the intervention program is likely not enough and the child may need special education.

*An evaluation for special education should not be delayed by the use of interventions if the parents want the evaluation to proceed.*

An evaluation for special education should not be delayed by the use of interventions if the parents want the evaluation to proceed. The interventions and the evaluation for special education can happen during the same period of time.

*School districts must have policies and procedures in place so that children who need special education are identified and evaluated.*

If a parent feels strongly that her child has a disability that is getting in the way of her child’s learning, then the parent should refer the child for a special education evaluation even though the teacher has not finished with the interventions. A sample parent referral letter is found in the [Sample Letters to Schools](#) section of this Guide.

### Child Find

Even as parents are watching for signs that their child may have special education needs, schools must be watching as well. The IDEA imposes a “child find” duty on school districts and charter schools. School districts must have policies and procedures in place so that children who need special education are identified and evaluated. School districts must be especially alert to make sure they identify homeless children,

foster children, migrant children, wards of the state, and children enrolled in private schools who need special education.

As part of the “child find” obligation, a child’s teacher (or any other school employee working with the child) must notify the school principal or Special Education Director if she believes that a child has a disability that is holding the child back. The principal should then contact the parent and request the parent’s consent to begin the evaluation process.

Similarly, if the school gets a communication from a child’s doctor, social worker, therapist or other person who works with the child asking that the child be evaluated, the school must contact the child’s parents within 30 days to let the parents know how the school will respond to the communication. The school can either propose that the special education process begin, or explain to the parent why the school staff has decided not to respond to the concerns.

If a school district fails to identify and evaluate a child with a disability, the district or charter school may be required to provide the student with “compensatory education” if the child is later determined to have needed the services. Compensatory education is generally one-on-one special education designed to catch the child up to where he would have been if the school district had identified his disability when it should have.

## Referral

The special education process starts when a child is “referred” by a parent, a teacher, or other school personnel. While other people, like a therapist, doctor, or social worker, can express concern to the school, only parents and school personnel can begin the official referral process.

When the school receives a written request from a parent or school personnel to refer the child, a 90-day clock starts. This means that the school has 90 days to evaluate the child for special education, *and*, if the child qualifies, put special education services into place for the child with an IEP. The school cannot evaluate any child without the parent’s consent. Thus, schools usually hold a meeting

*The special education process starts when a child is “referred” by a parent, a teacher, or other school personnel. When the school receives a written request from a parent or school personnel to refer the child, a 90-day clock starts.*

(sometimes called a “pre-eligibility” meeting) to have the parent sign consent forms, and talk about the child’s strengths and weaknesses.

Sometimes, school personnel may decide that there is no reason to evaluate after all. If that is the case, the school must give the parent a written notice of this decision. The parent has the right to challenge the decision using one of the dispute resolution mechanisms. For more information on challenging school decisions, see the [IDEA Dispute Resolution](#) section of this Guide.

### Independent Educational Evaluation

Sometimes parents disagree with the results of the tests done by the school district. For example, the parents may think the school psychologist’s tests do not accurately show a child’s strengths and weaknesses or do not show a full picture of the child. In those cases, parents can ask for an “independent educational evaluation” (IEE).

An IEE is done by an independent third party, but the school has to pay for it. To ask for an IEE, the parent should write a letter to the principal or to Exceptional Children/Special Education staff at the school district. The letter should say that the parent disagrees with the school’s evaluation, and that the parent requests an independent educational evaluation. A sample letter can be found in the [Sample Letters to Schools](#) section of this Guide. Parents can also pay for their own IEE, without having to disagree with the school’s evaluation. In this case, the team of people making the eligibility decision must consider the results of the parents’ IEE, but the team is not required to agree with its conclusions or reimburse the parents for the cost of obtaining the evaluation.

### Transition Services

Transition services are special services for students who are 16 years old and older designed to assist with the transition to life after high school. (The IDEA uses the term “post-secondary” to refer to life after high school.) The services should be designed to help the student be ready for employment, further education, and independent living. The services should be individualized for each student, depending on the student’s goals for his life after high school. They become part of the older student’s IEP and must either be provided by school personnel or supervised by school personnel.



*Transition services are special services for students who are 16 years old and older designed to assist with the transition to life after high school.*

The IDEA defines transition services as a “coordinated set of activities” within a “results-oriented process.” The services should facilitate the student’s movement from school to post-school activities; they should include “instruction, related services, community experiences, . . . and, when appropriate, acquisition of daily living skills.”

Transition planning begins when the student is 14 years old. The IEP team must take into account the student’s preferences, but also must be realistic. Regardless of how much a student wants to be an NBA player after high school, it is not realistic for most students. Similarly, if a student is not taking a course of study that will prepare him for a four-year university, then enrollment at a four-year university should not be the student’s stated goal that drives the transition planning.

Of particular importance are independent living skills for students who are not likely to continue with their formal education after high school. These skills could include handling money, using public transportation, learning to drive, cooking, preparing a resume or job application, and other similar skills. Once a transition goal has been identified, services should be put into place that will allow the student to achieve the goal. Transition goals should be stated along with academic goals in the IEP.

### Re-evaluation

All children who qualify for special education should be reevaluated, or retested, at least once every three years. They can be reevaluated more often if there is a specific need for information. However, unless the parent and school agree, the child should not be tested more often than once a year.

*All children who qualify for special education should be reevaluated, or retested, at least once every three years.*

Reevaluation has two purposes. First, it helps the IEP team determine if a child still qualifies for special education. If the child still qualifies, it also helps the IEP team with planning for future educational needs.

A child must be reevaluated before his special education services can be stopped. The exception is when a student graduates from high school. Also, a child who is

“developmentally delayed” must be reevaluated before she turns 8 years old or enters the third grade, whichever comes first. This is because the “developmental delay” category only applies to children ages 3 through 7.

### Extended School Year (ESY)

Although most special education students attend school only during the times that school is normally in session, some special education students may be entitled to additional educational services outside of the normal school day or normal school year. These services are called “extended school year” services or “ESY.”

*ESY services are special education services that are provided -- at no cost to parents -- beyond the normal school year, if they are necessary to ensure that a student receives a FAPE.*

ESY services are special education services that are provided at no cost to students *beyond the normal school year* when necessary to ensure that a student receives a FAPE. These services are based on the specific goals and objectives of the child’s IEP and therefore must be individually designed and put in place to meet the child’s needs. The need for ESY services should be considered every year at the child’s IEP meeting. Each IEP form should contain the option for a child to get ESY

services. The decision regarding whether a student needs ESY services should be made by the full IEP team, including the parent.

Court cases over the years have found two major situations in which a student should be found eligible for ESY services. The IEP team should consider both when deciding if a child needs ESY.

- If the child has a history of losing learned skills or behaviors during extended breaks from school, and has been unable to regain them within a reasonable time after the break, then he should be provided with ESY services. After summer breaks, a reasonable period of time to regain lost skills is about 4 - 6 weeks. It is shorter for shorter breaks. In other words, if it takes a child more than 4 – 6 weeks at the beginning of a school year for the child to regain the skills learned the previous year, then the child is eligible for ESY.
- If the child is at a critical stage in the development of an important skill and a break in his education would make it so that he might not fully develop that skill, then he should be provided with ESY services. Important emerging skills

can be academic, such as reading, or functional, such as communicating or toileting.

### Moving from School to School

A child's special education services should not be interrupted just because a child moves from school to school. The child's IEP should go with him. If a child moves from one North Carolina school district to another, or to a new charter school, then the new school has the duty to continue to provide services that are required on the child's IEP, until one of two things happens: either the new school adopts the previous school's IEP, or the new school develops a new IEP.

*A child's special education services should not be interrupted just because a child moves from school to school.*

If a child moves into a North Carolina school district from another state, the North Carolina school must continue to provide services that are *comparable* to the ones on the child's out-of-state IEP. The new school district will usually do its own evaluation of the child and develop a new IEP. Comparable services should be similar to the services from the other state, but don't need to be identical.

### Ending Special Education Services

Special education services will continue until the child no longer qualifies for them. The following events will end eligibility:

- The child graduates from high school with a regular diploma;
- The child reaches the end of the school year in which she turns 22;
- After a reevaluation, the child's IEP team determines the child is no longer eligible for services, i.e., no longer disabled and/or no longer needs special education.

### Parental Rights

The IDEA protects the rights of parents to be involved in the decisions regarding their child's special education program. These rights are sometimes called "Procedural Safeguards." Among the most important parental rights are the following:

- The right to attend and participate in all eligibility and IEP Team meetings regarding their child;

- The right to written notice of decisions made by the IEP team (described more fully below);
- The right to request an independent educational evaluation, paid for by the school district, when the parent disagrees with the school's evaluation;
- The right to give informed consent before a child is evaluated or provided special education (described more fully below);
- Access to their child's educational records;
- The opportunity to have disputes resolved through the use of facilitated IEP meetings, mediation, due process appeals, and state complaints (described more fully in the [IDEA Dispute Resolution](#) section of this Guide); and
- The right to place a child in private school, at school district expense, if the school district or charter school fails to provide a free, appropriate public education to their child.

The state Department of Public Instruction publishes a handbook that explains the safeguards in detail. The school district must provide a copy of the handbook to parents, in the parents' native language if that can be done relatively easily. The handbook can be downloaded from the [DPI website](#).

### Prior Written Notice

Parents have the right to receive written notice of certain decisions about their child's special education program. Although the legal term is "prior written notice," usually the notice is about a decision that has been made at an IEP meeting. Parents are typically handed the notice at the end of the meeting or sent the notice soon after the meeting. Parents are entitled to notice in the following situations:

- The school district has decided to evaluate a child;
- The school district has decided not to evaluate a child;
- The school district has found a child either eligible or not eligible for special education services;
- The primary disability category of a child will change;
- The child's educational placement will change; or
- The services or other aspects of the child's IEP will change.

The "Prior Written Notice" must include:

- A description of the IEP team decision, together with an explanation of the reasons for the decision;
- A list of the documents or other records that support the decision;

- Information about how a parent can resolve disputes about the decision; and
- Places where a parent can get help understanding the decision.

The date of a “prior written notice” is important because it starts a deadline. Parents have a year from that date to start any formal dispute resolution process. For more information on dispute resolution, see the [IDEA Dispute Resolution](#) chapter in this Guide.

### Informed Consent/Parental Consent

“Informed Consent” means that the school district must get a parent’s permission before it 1) tests a child to determine eligibility for special education; and 2) provides special education to a child. The parent will receive a notice describing what the school proposes. The notice must be in the parent’s native language (when appropriate) and must be clear and understandable. The parent must sign the consent form before any testing or services may begin. Consenting to an evaluation or special education for a child is completely voluntary. A parent can consent to the testing, but later decide that she does not want her child to receive special education. Also, a parent can withdraw consent at any time and then special education services must end. If a parent refuses consent, however, he may not later claim that the school failed to provide a FAPE to his child.

### 504 Plans

504 Plans are used for students with disabilities that need some accommodations or modifications in the school environment, but don’t necessarily need specialized instruction. The term “504 Plan” comes from the section number in a law known as the Rehabilitation Act of 1973. This is a federal law that protects people with disabilities from discrimination in any educational institution that receives federal money. Because all public schools in the US receive federal money, Section 504 of the Rehabilitation Act of 1973 applies in all public schools.

*A 504 Plan is a plan to assure that a student with a disability can fully access the school and its programs, and is not excluded or disadvantaged because of the student’s disability.*

A 504 Plan is a plan to assure that a student with a disability can fully access the school and its programs, and is not excluded or disadvantaged because of the student’s disability. This access can include physical access and well as educational access. For example, a student who uses a wheelchair would need special transportation to and

from school as well as to extracurricular events. A child with a hearing impairment might need an FM device, which amplifies the teacher's voice in headphones a child wears, so that the child can hear in regular classrooms. Transportation in a specially-equipped van or bus, or classrooms equipped with FM systems would be included in a student's 504 Plan. Other common 504 plan accommodations include the following:

- Use of a keyboard to type notes or assignments for students who have a writing disability;
- Audiobooks, for students with a reading disability;
- Extra time on assignments, tests, and quizzes, for students with difficulties with concentration;
- Special seating to avoid distractions, for students with difficulties staying focused;
- Use of a calculator;
- Extra breaks throughout the day;
- Separate settings for tests;
- Modifications of assignments to make them shorter or otherwise more accessible.

The definition of “disabled” for protection by Section 504 is different from the definition of disabled for IDEA eligibility, although there is overlap between them. Persons protected by Section 504 are those with a disability that affects major life activities, such as walking, hearing, seeing, breathing, self-care, and learning. IDEA only covers children whose disability affects learning. Generally, if a child is disabled under both laws, the child will have an IEP rather than a 504 Plan.

The 504 law does not require that a 504 Plan be written, nor does it include the various procedural protections found in the IDEA. While it is good practice for a 504 Plan to be developed with input from the student's parents and then written down, neither is required by the law.

Most school district have someone designated as the “Section 504 Coordinator.” Questions about the 504 process can be directed to that person. Each district will also have a “504 Grievance Process” outlined in school district policies that allows a parent or student to challenge a decision made denying 504 accommodations or services. Enforcement can also be pursued through the federal Office for Civil Rights. Instructions on how to file a complaint are found on the website of the [U.S. Department of Education, Office for Civil Rights](#).

## PART II

### CHAPTER 4 • Understanding Evaluations and Educational Testing

#### Introduction

Educational testing is one of the tools used by school districts to determine if a child is eligible for special education services.

Testing is used along with teacher observations, parent observations, classroom work, medical and mental health

diagnoses, and other relevant information. Together, this information should develop a well-rounded picture of a child and his or her educational needs. Using the information, the child's team can determine if the child has learning problems that should be addressed through special education. Another word for this type of testing is "evaluation."

*Educational testing is one of the tools used by school districts to determine if a child is eligible for special education services.*

The testing done as part of a special educational evaluation is different from classroom testing. The type of tests used in a special education evaluation are designed to measure general abilities and skills, not whether the child has learned what has been recently taught in the classroom. Usually, the tests produce scores that show how a particular child performs compared to other children. The tests don't usually have "passing scores" or "cut scores" the way classroom tests or state standardized tests do. Instead, the testing results show how the tested child did on the test as compared to children across the country of exactly the same age.

The testing done for a special education evaluation is usually coordinated by a school psychologist and is free to parents. The psychologist determines what tests will be given. Sometimes, other school professionals will administer some of the tests. If a medical problem seems to be affecting the child's learning, a medical evaluation by a doctor will be included. Each child is given an individualized set of tests, depending on the nature of the learning problems suspected. The tests are usually given to the child during the school day, in a one-on-one setting outside of the classroom. A child's parent has to consent to the testing, although there is no requirement that the parent know exactly when the testing will be done.

After the testing is completed, the psychologist will produce a report that lists what tests were given and summarizes the results. This is known as a "psychoeducational



report.” A team will get together to review the report and determine if the child needs special education. The parent and other knowledgeable people are on the team, and given the responsibility of considering the testing and other information about the child to determine eligibility. The team will always include a psychologist or other professional who can help the team understand the tests and their results. The team will compare the test results with the standards set by the state in the [NC Policies Governing Services for Children with Disabilities](#) to determine whether the child is eligible to receive special education services. The rest of this section will explain the testing process in more detail and will define the vocabulary used in the special education evaluation process.

## The Testing Process

### Referral

The testing process, also known as the evaluation, usually gets started after a child has been “referred.” A referral should happen after either the parent or teacher suspects that the child might have a disability that is getting in the way of the child’s learning. If the parent believes her child might have something interfering with her learning, she should refer the child for testing. A referral is made through a written request to the school principal which expresses the parent’s your concern about the child’s learning. The letter should ask that the child be tested to see if she might have a disability for which she could get special education services. A sample parent referral letter is found in the [Sample Letters](#) to Schools section of this Guide. The letter can be an e-mail; it just needs to have a date, a clear description of the parent’s concerns, and a request for special education testing. Parents should be sure to keep a copy of the letter requesting evaluation. If a parent asks for the testing orally, the teacher or principal must let the parent know that the request must be made in writing. An oral request will not start the process.

*Parents should be sure to keep a copy of the letter requesting evaluation. An oral request will not start the referral process.*

A child can also be referred for testing by a teacher or administrator at the child’s school. In fact, schools have what’s known as a “child find” obligation. This means they should be looking for children who are having problems learning and should suggest testing to discover what the problem might be. However, no testing can be done without the parent’s consent.



A child cannot, technically, be referred for evaluation by anyone other than the parent or school personnel. For example, a request for testing by a pediatrician, social worker, therapist, or other professional working with the child is not a referral that will start the testing process. Nevertheless, if someone other than the parent or school professional sends a request for testing or a suggestion that the child needs special education, the school district must respond. The [NC Policies Governing Services for Children with Disabilities](#) require that within 30 days of receiving a request from someone other than the parent, the school district must either notify the parent that the concerns raised will not be pursued, or it must schedule a meeting with the parent to discuss the concerns and decide whether to go forward with a referral meeting.

When parents refer their child, they may be told that the special education testing should wait until after “interventions” are completed. Interventions are special classroom strategies used in the regular classroom to target certain problems the student may be having. The idea is that if the classroom interventions are successful, then the child will not need to be labeled as having a disability or need special education. While interventions are often helpful and can be successful enough that the child does not need special education, the use of interventions cannot be used to stop or delay a referral. Instead, interventions can be used during the period of time that the child is being tested (up to 90 days from the date of the referral letter). Results from both the interventions and the formal testing can be used later to determine whether the child has a disability and needs special education.

#### [Referral meeting \(sometimes called “pre-eligibility meeting”\)](#)

After the principal receives a referral – from either the parent, a teacher, or other school professional – a meeting should be scheduled to discuss the referral. This should occur within a reasonable period of time, such as a few weeks, from when the referral was made. The meeting should include the parents and school personnel. The topic of the meeting is whether the child should be tested and if so, what types of tests should be used. A form, known as the Special Education Referral, will be filled out at this meeting. The form has spaces for the child’s strengths, concerns about the child, and the observations of parents, teachers, and others. At the end of the meeting, the people at the meeting should try to come to a decision about whether the child should be tested. If the group decides testing should go forward, the form also lists what types of information

are needed to assess the child's needs. The parent will need to sign a consent form to allow the testing.

The group at the referral meeting might decide that testing isn't needed. This could be because the group decides that the child is progressing well and would not benefit from special education. If so, the IEP team will give the parent "prior written notice" at or shortly after that meeting that it will not conduct evaluations. If the parent disagrees with this decision, then the parent can challenge it using one of the dispute resolution tools. See section on [IDEA Dispute Resolution](#) in the Guide for more details.

### Testing/evaluation

If the group decided to go forward with testing, arrangements will be made for the testing to occur. The testing typically occurs during the school day when the parent is not present. The child will be taken from his classroom to be tested in a one-on-one setting. Usually, the testing will not all occur on the same day. The testing will always include hearing and vision screenings and then other identified tests, depending on the areas of concern. The tests must be administered by qualified people, which might include a psychologist, a teacher, a speech

*If the child does not have a doctor, or the parent cannot get the information that is requested, then the school district must arrange for the child to be seen by a doctor, free of charge to the parents, to diagnose any medical conditions that may be affecting the child's ability to learn.*

pathologist, an occupational therapist, an audiologist, or any other trained professional. The testing is all arranged by the school personnel and is free to the parent.

If there is concern that a child has a medical condition that is interfering with learning, a physician may need to contribute to the evaluation. The school personnel may ask the parent to provide information about the child's health

condition from the child's doctor. If the child does not have a doctor, or the parent cannot get the information that is requested, then the school district must arrange for the child to be seen by a doctor, free of charge to the parents, to diagnose any medical conditions that may be affecting the child's ability to learn. This comes up most commonly when the condition suspected of having an impact on learning is Attention Deficit Hyperactivity Disorder (ADHD). Even though a clinical psychologist has the training to diagnose ADHD, the North

Carolina policies require a doctor's diagnosis. If the child has a diagnosis from a psychologist rather than a doctor, or doesn't yet have a diagnosis, then the school district has the obligation to obtain a medical evaluation to verify the condition if the parent doesn't have verification. It would be unlawful for the child's eligibility to be denied because the parent did not produce medical evidence of a disability.

### Eligibility meeting

Within 90 days of the date of the parent or school referral letter, another meeting must be held to determine if the child is eligible for special education services. The testing will be reviewed at this meeting. The state of North Carolina has established criteria for 14 different categories of disabilities. Attendees of this meeting must include the parent and someone who can interpret the testing results, in addition to teachers and an administrator. The job of the assembled team is to look at the testing results, other information about the child, and the criteria in the [\*NC Policies Governing Services for Children with Disabilities\*](#) and determine if the child meets the criteria for being "disabled" under the special education law. The 14 categories of disability are:

- Autism Spectrum Disorder
- Deaf-blindness
- Deafness
- Developmental Delay
- Emotional Disability
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech Language Impairment
- Traumatic Brain Injury
- Visual Impairment

### Informed consent

The school district must get a parent's "informed consent" in two circumstances. First, the school district must get a parent's consent to do an evaluation of a child. If the parent will not allow an evaluation to proceed, then she cannot later make a legal claim that her child did not get the special education services she

was entitled to. Second, the district must get a parent's consent before it provides special education services. The school cannot provide any special education to a child unless the parent has agreed for those services to be provided. (There are a few exceptions to this rule, if the parent cannot be found or the parent has lost parental rights, for example.)

### Types of Testing

Many different types of testing instruments are available to psychologists. There is no standard set of tests that will be given to each child who is being considered for special education eligibility. The tests chosen for each child will depend on a number of factors including the areas of suspected disability and the particular tests that are preferred by the psychologist or the school district. Nearly all evaluations for special education eligibility will include a "psychoeducational" evaluation, which will include at least a "psychological test" and an "achievement test," as described more fully below. The law requires that a variety of tools be used to gather relevant information and that a child's eligibility cannot be based solely on one test score.

Even though each child takes a different set of tests, most of the tests are "standardized." In this context, that means that the person administering the test must follow a standard set of instructions and ask the questions in exactly the same way to each child. The tests are given in a one-on-one setting and in an environment where the child will not be distracted (to the extent possible). Often, the tests are given on multiple days. They can take several hours to administer.

It is worth noting that these standard tests do not capture many qualities that affect a child's ability to learn and perform in the classroom. Characteristics like creativity, motivation, social intelligence, resourcefulness, and self-discipline are not captured by these tests, yet those characteristics – or lack of them – can greatly affect a child's success in school and other endeavors.

### Psychological/Cognitive (IQ Testing)

A psychological test, also known as a "cognitive assessment" is a measure of basic intellectual ability (IQ). Intellectual or cognitive ability is the ability to understand and use information, and the ability to solve problems. The tests include subtests that measure different abilities: verbal, nonverbal, spatial, memory, and processing speed. Psychological tests produce an overall "IQ score." Children with high IQ scores on psychological tests are generally expected to be able to handle academic tasks more easily than those with lower scores (although many

other characteristics of a child will influence how well she ultimately does in school).

Commonly used IQ tests include the Weschler Intelligence Scale for Children (WISC), the Stanford-Binet Intelligence Scale (SB), the Differential Ability Scales (DAS), the Kaufman Assessment Battery for Children (KABC), and the Reynolds Intellectual Assessment Scale (RIAS). The names will often have a number after them, referring to the specific edition of the test.

### Educational/achievement tests

An “educational” or “achievement” test is a measure of what the child can do in the basic areas taught in school: reading, writing, and math. The test is divided into subtests, which separately measure the building block skills within each of those subjects. In reading, for example, the subtests will measure a child’s ability to recognize letters and sound out words, to understand the meaning of words and longer passages, and to read quickly. In math, the subtests will measure a child’s ability to calculate with numbers and solve various word problems.

Commonly used achievement tests are the Woodcock-Johnson Test of Achievement (WJ), Weschler Individual Achievement Test (WIAT), Wide-Range Achievement Test (WRAT) and the Diagnostic Achievement Battery (DAB).

### Rating Scales

Some abilities or disabilities of a child cannot easily be measured by having the child answer questions or perform tasks. Psychologists have developed “rating scales” that allow other people to provide information based on their observations of the child. Usually filled out by parents and teachers, rating scales ask the rater to state how often they see the child engage in certain behaviors or express certain feelings. If the child is old enough, he also may be asked to rate his own behaviors and feelings. Rating scales are a tool used in the diagnosis of Attention Deficit Hyperactivity Disorder, some emotional and behavioral disorders, autism, intellectual disability, and other conditions.

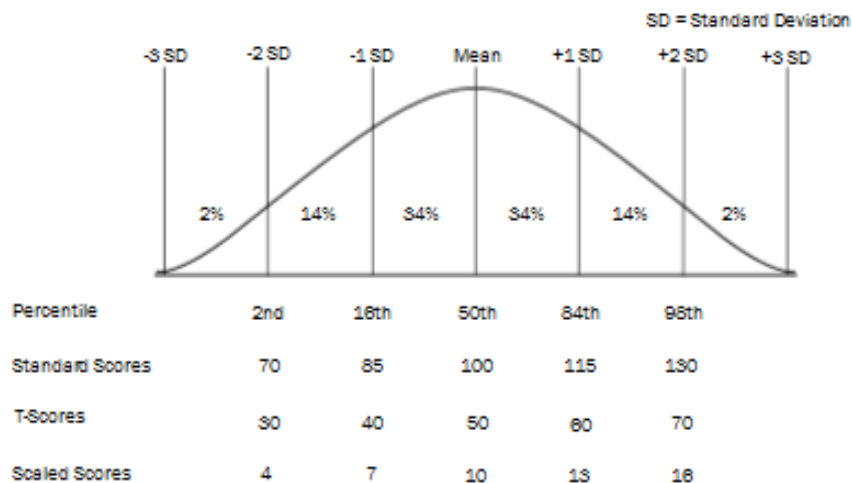
### Other tests

Depending on the areas of suspected disability, a variety of other tests may be used. If a child has difficulty with communication, for example, he or she might be given the “Clinical Evaluation of Language Fundamentals.” For a child having difficulty with perception and visual skills, a test of “visual-motor integration”

(i.e., hand-eye coordination) might be administered. The professionals involved in the child's evaluation are charged with selecting the right tools to use. Parents should always feel free to ask about the tests: What is this test testing? How does it work? What was my child asked to do?

### Scoring of Tests

The result of a test is nearly always some type of score. On many tests used in a special education evaluation, the score will show how the child performed compared to other children of the same age. Test developers identify “the norm” for each test after



administering the test to hundreds or thousands of other children of the same age. Through the norming process, the test creators determine what scores fall into the “average” range, and what scores show either higher-than-average performance or lower-than-average performance. All the test scores will fall somewhere on a “bell curve,” which is a representation of how the results of the test are distributed throughout the population. Because most people score in the average range, there is a big hump in the middle of the curve. Fewer people score either higher than average or lower than average, those numbers are shown on the “tails” out to either side.

### The Bell Curve

The exact center of the curve is exactly average – but almost no one is exactly average. Usually, the large middle group are all said to be average; the middle 68 percent of the sample. About 14 percent of the sample will be higher than average; another 14 percent will be lower than average. About 2 percent will be much higher than average; another 2 percent will be much lower than average.

## Percentiles

Percentiles are yet another way that scores are expressed. Percentile scores express more specifically where a child's performance falls in relation to other test takers. Technically, one percentile is one hundredth ( $1/100$ ) of the whole. A student whose score is at the 40th percentile has scored better than 40 percent of the students who took the test and not as well as 60 percent of those who took the test.

Imagine 100 children. Each child is asked to perform the same task – answer addition problems, for example. Each child's performance is scored, and then they are lined up from the child who got the fewest correct to the child who got the most correct. The child who got the fewest correct is at the 1st percentile, the child who got the most right is at the 99th percentile. The child who got exactly the average number correct is at the 50th percentile. The rest of the children are lined up on either side of the middle; their position in line shows how they scored in relation to all the children who were asked to perform the same task. The children to the left of the middle child got fewer answers correct; the children to the right of the middle child got more answers correct. So, in the example above, the child at the 40<sup>th</sup> percentile would be the 40<sup>th</sup> child in the line of 100 children – scoring better than 39 and worse than 60 of the children in line.

## Standard scores

Another common way of expressing the result of a test is through a "standard score." The raw scores on the test – based on how many questions were answered correctly – are converted to standard scores so that easy comparisons can be made. The score of 100

*With standard scores, scores between 85 and 115 are all in the average range.*

is at the middle. Scores over 100 are above average; scores under 100 are below average. The student with a score of 100 is at the 50th percentile and exactly average. Scores of anywhere between 85 and 115 are all considered to be in the average range. Although it may vary from test to test, on most tests, the following descriptions apply:

- Below 70 ..... Impaired (very significant difficulty)
- 71 – 76 ..... Borderline (significant difficulty)
- 77 – 84 ..... Low average (more difficulty than most)
- 85 – 115 ..... Average

- 116 – 129 .....High average (less difficulty than most)
- 130 or above..... Superior (very little difficulty)

### Other scoring systems

“T-scores” – T-scores are similar to standard scores, in that they show the child’s relationship to an average score for a child of similar age and gender. Tests related to behavior and emotional stability often use T-scores. With T-scores, the exact average score is 50; scores between 40 and 60 are all considered in the average range.

On most tests scored with T-scores, scores between 60 and 70 are considered elevated and may be a cause for concern; scores above 70 are concerning and may show a significant problem. Scores over 70 are often said to be in the “clinically significant” range. That means that they reflect a condition that is quite far outside the norm and should be looked at by a professional. Rating Scales often produce scores in this T-score format.

“Scaled scores” – Scaled scores are often used on the subtests, and then used to calculate an overall score. Scaled scores range from 1 – 20, with 10 being exactly average, and scores of 7 - 13 considered in the average range. Scores of 4 or below suggest a significant problem area.

### Confidence Intervals

It is important to realize that a test score reflects how a student performed on the particular day the test was given. Many things impact how a student performs on a particular day other than just how well he could answer the questions posed. For example, a student might do less well if she is hungry, tired, mad about the testing, distracted, or not feeling well. He might do better on a day he is feeling confident and happy. Nevertheless, the student’s exact score is likely to be in the range of what that student would score if she took the same test on a different day under different conditions. The “confidence interval,” which is a range of scores, expresses this concept. If the confidence interval is, for example, 82 to 90, it means that there is a very high likelihood that the child’s score would be somewhere between 82 to 90 if he took the test again, or even took it multiple times.



### What to look for in a report

After a child is tested, the psychologist will write a report to present the results. This is often called a “psychoeducational report.” Parents typically will not be shown the actual questions and answers on the tests, or even the raw scores (i.e., how many questions the child answered correctly). Instead, they will get a report that describes the tests given and the scores that have been calculated based on the raw scores. A good report should contain all or most of the following sections:

- **Identifying information:** The report should identify the child’s age and/or date of birth as well as the date of the evaluation.
- **Reason for referral:** The reasons for the referral should be included. If there are concerns that were raised by teachers or parents, they should be summarized.
- **Assessment procedures:** The report should list all the various sources of information used by the evaluator to arrive at the conclusions.
- **Background information/interview findings:** A thorough evaluation should include an interview with the parents, which will reveal background information, health history, educational history, etc. Most private evaluators include this section; many school evaluations do not, as the evaluator does not make contact with the parents.
- **Previous testing:** The evaluator should review any previous testing or earlier psychoeducational evaluations if they exist.
- **Behavioral observations:** The evaluator should report what she noticed about the child, including how the child interacted with the evaluator, how the child approached the testing situation, and any other factors that might provide insight into the actual test results. The evaluator should always include a statement about the evaluator’s assessment of whether the test results are considered reliable and valid.
- **Evaluation results:** The report should list the various tests that were given, and provide an explanation for what each test was measuring. As most of the tests have various subtests, those should be explained as well. The report should contain an explanation of the scores and their meaning as well as charts showing the actual scores.
- **Summary of findings:** The report should summarize and analyze the data. Private evaluators will typically provide a diagnosis and specific recommendations. School psychologists are taught not to include a diagnosis

or a conclusion about eligibility for special education. They leave the decisions regarding eligibility to the IEP team.

- **Recommendations:** The report should make recommendations about what the child needs in the educational setting to succeed. These recommendations should be directed to both teachers and parents.

### Suggested questions to ask about a report

A psychoeducational report is often very overwhelming for a parent. Parents should be given time to read and try to digest the report before having to make decisions based on it (such as whether a child needs special education). They should also be given an opportunity to have the psychologist explain the report to them. Following are some questions parents might have about a report that are worth asking:

- What were my child's areas of strength?
- What were the biggest problem areas for my child?
- What types of problems/questions was my child not able to complete correctly?
- Do the tests show any patterns of strengths and weaknesses, when looked at as a whole?
- What do the tests show about how my child learns best?
- What is getting in the way of my child's success in the classroom?
- What types of modifications in school will help my child?
- How should my child's lessons be specialized to meet his learning style and needs?
- What can I and my child's teachers do to help my child work around his problem areas?
- What can I and my child's teachers do to help my child develop strengths where there are now weaknesses?
- What does [XXXX] mean? (insert for the XXXX any words or conclusions in the report you don't understand)

### Independent Educational Evaluations

Sometimes, parents feel that the testing done by the school psychologists is just wrong. They feel that it doesn't really represent their child or their child's strengths and weaknesses. Under the IDEA, parents have the right to have an outside evaluator conduct independent testing if they disagree with the results of the school district's testing. If the parents disagree with the testing results, they should ask the school district to pay for an "independent educational evaluation." Parents can select their

own evaluator, so long as that person meets the qualifications required by the school district, or can choose from a list of qualified persons kept by the school district. If parents request an independent education evaluation, the district is required to either pay for the independent evaluation or file a due process petition to ask a judge to determine that its own evaluation is appropriate and an independent evaluation is not necessary. The law requires that the school not “unreasonably” delay an independent evaluation, but does not set a time limit for the evaluation.

Parents who have obtained outside testing on their own can present the testing results to the team. The team is required to consider the results of outside testing, though there is no requirement that the team adopt the findings of the outside evaluator or follow the evaluation’s recommendations. School personnel must have a valid reason to reject an outside evaluator’s results, and explain that reasoning at the meeting.

### Some terms to know

Psychoeducational reports contain a lot of terms that most parents haven’t encountered before. Here are a few definitions that might be helpful.

- **Cognitive skills** – These are a person’s basic thinking skills, which include the abilities to understand, learn, and remember information.
- **Verbal skills** – These are the skills used in understanding words and their meanings.
- **Perceptual reasoning skills** – These are skills used in seeing patterns, getting meaning from visual images, and forming mental pictures. They are non-verbal, meaning they don’t rely on words.
- **Working memory** – This relates to a person’s ability to hold information in his mind long enough to do something with it, such as respond to it, remember it, and retrieve it when needed.
- **Fluency** – This refers to how quickly and accurately a person can do a task, such as read, write, speak, etc.
- **Processing speed** – This relates to how fast a person can mentally process routine, known information without making errors.
- **Executive functioning** – This refers to a person’s ability to mentally plan, organize actions, make decisions, focus one’s attention, inhibit impulses, and achieve goals.
- **Adaptive functioning** – This relates to the ability to handle the common demands of life appropriate for a person of similar age. Adaptive skills include practical skills like dressing appropriately for the weather, fixing food, telling

time, staying safe, using money, following common rules and customs, solving problems, etc.

- **Phonemic awareness** – This is the ability to distinguish sounds in words.
- **Decoding** – This is the ability to sound out a written word.
- **Reading comprehension** – This is the ability to get meaning from written text. This is beyond the ability to read individual words; it includes the ability to understand longer written passages and remember the meaning.

Psychoeducational reports can be very hard to interpret for non-psychologists. Parents may wish to ask for the report a few days before the meeting at which it will be discussed so they can read it carefully, research unknown terms, and prepare a list of questions for the psychologist. Taking those steps will give parents the best chance to understand their child's needs and be in a position to evaluate the special education services offered by the school to address those needs. If a copy of the report is not provided before the meeting, parents should insist on being given the time they need at the meeting to read through all of the report and have the psychologist explain any portions of the report they don't understand.

## PART II

### CHAPTER 5 • Approaching IEPs and IEP Meetings

#### Introduction

An Individualized Education Program (IEP) is a document that contains the plan for the special education services that a child with a disability is to receive from the school. The plan is reviewed at least once a year, at an IEP Team meeting. The IEP team is made up of the parents; the child's regular education teacher (if there is one; if not a selected regular education teacher); the child's special education teacher; other providers, such as a speech therapist or occupational therapist; and someone who represents the school district (also known as the LEA representative). Students themselves can participate, especially when they are of high school age.

A child's IEP team is given the responsibility to develop a plan for the child that will encourage him to make reasonable progress in school despite the existence of a disability that makes progress difficult. The team should work together to develop the plan; the goal is to come up with an IEP that is uniquely suited for the particular student and appropriately ambitious in light of the child's circumstances.

This chapter is designed to help parents understand the important issues that should be addressed at an IEP meeting and to prepare better for meetings. Because the IEP is a fairly complicated form, and the language used is often highly technical, the meetings can sometimes leave parents feeling confused and excluded from the discussion. Some thoughtful preparation ahead of the meeting can help parents feel more included and informed.

*Going into an IEP meeting, everyone should be focused on these two questions:*

- *What is getting in the way of the student's success at school?*
- *What would help the student be more successful?*

A thoughtful discussion of the core issues (leaving aside for the time being all the technical vocabulary, the various boxes on the form, and the way things have been done in the past) can make a big difference in creating an IEP that will work for the student. There are no rules that dictate the order of the discussion; parents can ask that before

the team starts focusing on filling out the IEP form, the team have an overall discussion of the real issues: why and how does the student struggle, and what would help her struggle less and learn more.

Before going to the meeting, parents should spend some time preparing. That means reviewing the most recent IEP, progress reports, sample school work, the most recent evaluation, and any other relevant records. The prepared parent will have all these documents in a binder with tabs or sticky notes so she can remain organized and quickly get to the right place in the meeting. Parents should be looking at last year's goals and thinking about whether they have been accomplished or not. Because progress on all the goals should have been measured by the teacher, parents should ask for the progress data before the meeting. This will help them evaluate whether the educational strategies, setting, accommodations, modifications, and other aspects of the child's education have been working well or need to be changed. Parents may wish to have some personal notes about what they want to talk about during the meeting; it is easy to lose track of those things once the meeting gets focused on filling out the IEP form. Parents can review their notes at the end of the meeting to make sure their points were covered.

### The IEP Form

The basic IEP form is developed by the [Exceptional Children Division of the NC Department of Public Instruction](#). Each school district or charter school can vary it somewhat, so long as it contains the required information. The following sections are based on the current DPI form; parents may see some variation from the form used in their local school district or charter school.

The development of a child's very first IEP form may set the stage for future forms, so particular thought should be given at the beginning. Nevertheless, everything is open to being changed at each annual review (or even in between annual reviews if the IEP does not seem to be working or if the child's situation has changed).

Most districts have computer software that allows the IEP form to be completed electronically during the meeting. A projector is connected to a computer and the form is displayed for everyone to see. Quite frequently, a special education teacher will have created a draft of the IEP before the meeting and the draft will be projected. Parents should remember that a draft is just a draft! Everything on the IEP is subject to change if it's not right.

### Identifying information

The top of the form contains the child's name, date of birth, school, and grade. The grade level is the grade at the beginning of the IEP, even though he may be in the next grade by the time it ends.

### Duration

IEPs last for one calendar year. The beginning and ending dates of the IEP should appear at the beginning of the form. The IEP team should meet before the ending date on the IEP to review it and develop a new one so that a current IEP is always in place. If there comes a time when the child no longer needs special education, a special meeting focused on ending special education (or, as is sometimes said, "exiting from services") must be held. This meeting must be preceded by a reevaluation.

### Category of Eligibility

This refers to the category of disability that qualifies the child to receive special education services under the IDEA. The category is determined at the initial eligibility meeting and can change after any reevaluation. A child may have more than one disability; if that is the case, then a secondary area of eligibility should be included on the form. Generally, the disability that causes the most difficulty for the child in the school setting should be the primary area of eligibility.

The child's disability, or category of eligibility, does not determine the special education that the child can receive. Each IEP should be completely individualized for the particular child. In other words, having an eligibility category entitles the child to an IEP, but does not control the services. Team members should focus on how the disabilities get in the way of the student's learning and how the IEP should be developed to address the student's unique needs.

*The child's disability, or category of eligibility, does not determine the special education that the child can receive.*

### Student Profile

This early section of the IEP should provide an overall profile of the student, without an emphasis on their special needs. For example, this is the place to describe what the student is good at in school, whether that be personal traits (hard working, cooperative) or academic strengths (especially interested in art, music, math, science, sports, etc.). Being at the beginning, it helps the team think about how to draw on those strengths as the rest of the plan is being developed.

### Assessment Information

Here, the team should look at how the student has performed on tests that are given to all students. These include report card grades, various screening tools used, and district-wide or state-wide tests (such as the End-of-Grade tests). This helps the team see where the student performs as compared to the whole student population, which can be useful when setting the annual goals.

### Parent's Concerns

This section allows parents to share with the team their most pressing concerns for their child's education. Parents should always come to an IEP meeting prepared for what they want to say. Some parents write out what they want to say here before the meeting and then read the statement to the team. Whoever is preparing the document should record exactly what the parents say; parents should correct the statement if it is recorded incorrectly.

The more specific here, the better. Parents should include concerns about the child's academic, emotional, social, behavioral, or functional needs. Examples: "I am concerned that my child is below grade level in reading and math and gets into trouble because he is frustrated about being behind." "I'm concerned that my child is already in high school but is not learning skills that will make him independent, like how to handle money or use public transportation." The concerns listed here should be addressed in the other sections of the IEP, such as in the goals and services sections.

### Parent's/Student's Vision for Student's Future

This section puts the focus on the student's life after high school. The parents and the student should carefully and realistically consider whether the student will attend a four-year university, community college, enter the military, enroll in a specific job preparation program, or go straight to work after high school. The answers to these questions should drive things like what "track" or course of



study the student pursues. Especially in high school, the student's course selection will be influenced by this vision for the future. If the student is aiming for college, then he needs to be taking the classes that will prepare him for college and are required by colleges. He should not be in an alternative program, such as the Occupational Course of Study, which is a high school track that generally does not prepare a student for college. On the other hand, if the student is four grade levels behind when entering high school, enrollment in a four-year university may not be a realistic vision and a different track might be appropriate.

### Consideration of Special Factors

This section allows the team to identify specific factors that will impact the education of the child. Some of the questions are relatively easy to answer; others are more nuanced or have significant implications. The questions include the following:

- *Does the student have behavior(s) that impede his/her learning or that of others?*

This question should be answered "yes" when the child is easily distracted from classwork, frequently misbehaves in the classroom, is often removed from the classroom, or has been suspended more than once or twice. If the question is answered "yes," the team must address the child's behaviors in the IEP. One approach is to include behavioral goals in the IEP, and have dedicated special education time to help the child achieve those goals. Another approach is to have a Functional Behavioral Assessment (FBA) completed and a Behavior Intervention Plan (BIP) implemented. More information about FBAs and BIPs can be found in the School Discipline chapter and under the Student Discipline heading in the [Frequently Asked Questions](#) chapter of this Guide.

- *Does the student have Limited English Proficiency?*

If a child is not proficient in English, it is sometimes difficult to determine whether the academic struggles come from the lack of English skills or a disability. If a child is still learning English, the IEP Team should take this into account when developing the IEP to make sure all the child's needs are being met.

- *If the student is blind or partially sighted, will the instruction in or use of Braille be needed?*

If the answer is yes, the team must assess how Braille instruction will be provided. Also, the full range of services for a blind or partially sighted student must be considered. That could include mobility and orientation instruction as well as a variety of assistive technologies.

- *Is the student deaf or hard of hearing?*

If a student is deaf or hard of hearing, the team needs to pay special attention to the child's language and communication needs. Assuring that the student has an effective way to communicate both with peers and teachers is essential. If a child uses sign language, sign language translation may be required. Direct instruction in the child's language is likely a type of special education that will be needed.

- *Does the student require specially designed physical education?*

Physical education (PE) means the development of: a) physical and motor fitness; b) fundamental motor skills and patterns; and c) skills in games and sports. If the child's disability interferes with her learning these skills in a regular physical education setting, then this question should be answered "yes" and PE goals and specially designed instruction must be included on the IEP.

### Present Levels of Academic and Functional Performance

This is a critically important section of the IEP. It is used to describe the child's starting point with regard to the skills that are affected by the disability. Without a good sense of the starting point, it is impossible to develop reasonable goals. Therefore, the more specific this section is, the more specific the goals can be. Also, if this section is specific, then it will be much easier to determine whether reasonable progress is being made.

*A good IEP will include a detailed statement of the student's current performance in all areas of concern: academics, behavior, social skills and communication. Parents should always be able to see the starting place for each goal.*

A good place to start when thinking about drafting the present levels of performance is to look at the present levels and goal statements in previous IEPs, if there are any. The team should be provided information on each goal from the previous year, how each goal was measured, and the student's progress based on those measurements.

This section should include information about any area of continuing concern. That could include academic performance, functional performance, behavior, and social/emotional development. *Academic performance* usually includes only reading, writing, and math, although there is nothing in the law that limits academic performance to these subjects. *Functional performance* relates to non-academic skills, such as communication, organization, and everyday living skills. *Behavior* includes the ability to follow classroom norms and school rules. *Social and emotional development* includes skills such as relationship-building, displaying empathy, exercising good judgment, responding to bullies, and respecting others.

For each area of concern, the "present level of performance" should include a summary of any data that has been collected. This could be the results of screening tools, test scores, grade-level assessments, observations, and the like. Again, specific details should be included. The following examples show the distinctions between statements of a child's present level of performance:

**Not specific enough:**

*Student is making progress in reading. He is good with sight words. He has trouble sounding out words.*

**Better; almost specific enough:**

*Student is making progress in reading. On the Brigance, he consistently answered questions on a second grade reading level. On the Star Reading Assessment, he also scored in the second grade range.*

**A good, specific statement:**

*Student increased his overall reading level from grade 1.8 to grade 2.5 between March and October 2015. This was measured using the Star Reading Assessment. On October 5, 2015, using the Brigance Diagnostic*

*Comprehensive Inventory of Basic Skills, student scored as follows: word recognition: grade equivalent 2.8; oral reading 2.7; reading comprehension 2.3; spelling 2.9. Average scores for nondisabled peers are between 4.0 and 4.5 in all areas. Student's ability to recognize and sound out words is better than his understanding and comprehension. When decoding (sounding out) words, he can identify beginning and ending sounds, but not middle sounds. He needs improvement in all aspects of reading.*

### Annual Goals

Annual goals should address the areas of concern identified in the present levels of performance. Each goal is a statement of what the student should be able to do one year from the starting date of the IEP. The team should focus on what would represent good, meaningful progress in each of the areas of concern identified in the present levels of performance. Another way of describing goals is that they should be “appropriately ambitious in light of the student’s circumstances.” Goals should focus on the knowledge, skills, and behaviors that the student needs to master the curriculum. They should guide the special education teacher toward relevant instruction throughout the year.

*Each goal is a statement of what the student should be able to do one year from the starting date of the IEP. Goals should set a strong target, but should also be realistic.*

Like the Present Levels of Performance, annual goals must be specific. They must also be *measurable*. If the goal is not specific and measurable, no one can tell if the child made progress on the goal. A goal is measurable when it identifies specific skills that the child needs to develop and sets a specific level for the child to meet by the end of the IEP time period. A goal such as “Student will increase his reading ability” is inadequate, because it is neither specific nor measurable. On the other hand, a goal such as, “When decoding, the student will correctly identify the middle sounds 90 percent of the time” is both specific and measurable.

Goals should set a strong target, but should also be realistic. For example, it may not be realistic for a child who is four grade levels behind in math to be on grade level by the end of one year. But the goal must set the child on track to make

good progress and, for most children, eventually be on grade level. The IEP team is in the best position to strike the right balance. (Note: children with very significant learning problems or very low IQs may never be on grade level, but should still learn and make reasonable progress.)

Special education teachers often present a draft of the goals to the team. Parents should remember that drafts are just proposed ideas; they can be revised as needed. All the main areas of concern mentioned in the present levels of performance should have a goal; for each goal, the starting place and ending place should be evident; and there must be a way to measure it. New goals can be added if all areas of concern are not addressed in the draft goals, and draft goals can be eliminated if they do not focus on an important skill area.

Goals can be academic, functional, or both. Functional goals include goals in areas of speech-language, occupational therapy, physical therapy, behavior, organizational skills, handwriting skills, social skills, and other daily living skills. Functional goals often require the student to receive related services, which are services required to assist a child with a disability to benefit from special education. Functional goals are important to many children with disabilities and should not be overlooked.

### Benchmarks or Short-term Objectives

Benchmarks or short-term objectives can be associated with an annual goal to break it down into easier-to-manage parts. The team must develop benchmarks/short-term objectives if the student is not following the standard course of study (that is, if the student will not take the standard End-of-Grade tests, but will instead take the “NCEXTEND1” test or no tests at all). Even though they are not required, benchmarks/short-term objectives may be incorporated into any IEP when the team believes they will be useful. Benchmarks can be a helpful way to break down the specific skills that the child needs to be able to accomplish the overall annual goal.

### Measurement of goals

The IEP must state how each goal will be measured. A goal can be measured in many ways, but the measurement must provide clear evidence of progress (or lack of progress) toward attaining the goal. Objective and specific measurements are more helpful than subjective, general ones. Objective measurements can include scores on assessments and standardized tests or recorded data about observations. Here is an example:

Annual goal:

- Given a 3rd grade reading passage, student will read 150 words per minute with 95% accuracy over five consecutive sessions.

How progress will be measured:

- Student will read orally for one minute each week.
- The teacher will observe and document the number of words and errors.

While using “teacher observation,” “work samples,” or “anecdotal notes” may be appropriate, they must produce recorded data that can show a student’s progress. General observational statements made casually at IEP team meetings are not sufficient to meet the legal standard of goals being measured.

### Assistive Technology

For each goal, the team should determine if assistive technology is needed for the student to accomplish the goals. Assistive technology (AT) includes equipment that is used to help a child with a disability function more effectively. Communication devices, FM systems, specially-designed keyboards, Braille readers, adjustable chairs, and audio books are just a few examples of AT. Assistive technology services are used to help a child with a disability select or use assistive technology. If the team is unsure whether assistive technology is needed, they can request that an assistive technology evaluation be completed.

### Related Services

Likewise, for each goal, the team should determine if related services are necessary to allow the child with a disability to benefit from the special education. For example, a child who cannot be understood when she talks would need the related service of speech therapy. A child who has poor motor skills and cannot write legibly would need the related service of occupational therapy. The IDEA lists a number of other examples of related services, including audiology services, interpreting services, therapeutic recreation, counseling services, orientation and mobility services, social work services, school nurse services, special transportation, and parent counseling and training. These are just examples; other services that may be needed to help the child benefit from his special education program.

For each needed related service, the team must determine how often, for what length of time, and in what setting the service will be provided. The frequency

and duration of the service is determined by how much is needed to allow the child to make reasonable progress on the associated goal.

### Specially Designed Instruction

The IEP must include a statement about the “specially designed instruction” the student will receive. At the heart of the student’s special education program, specially designed instruction is the instruction that will be provided by the special education teacher to help the student accomplish the annual goals. The IEP team should carefully consider what amount of instruction will be needed for the student to make reasonable progress on the IEP goals. The IEP must set out what specially designed instruction will be provided, how often, for how long at a time, and in what classroom setting. For example, a child might receive special education in language arts for 45 minutes per day, five days per week, in the resource classroom. This would indicate that every school day, the student would leave the regular classroom to attend class for 45 minutes with a special education teacher for language arts to work toward progress on the language arts goals.

If the student has goals in more than one academic or functional area, then specially designed instruction must be identified for each of them. Parents should be especially alert to making sure there is specially designed instruction for functional goals such as behavior, communication, organization and focus, etc. Some IEP teams fail to specify the amount of specialized instruction needed for functional goals, which often results in little to no progress on those goals.

Parents should also be alert to whether the amount of specialized instruction listed on the IEP will be enough to allow their child to make meaningful progress on the goals. If a child has goals that require significant increases in skills, for example, it is unlikely that 30 minutes of specialized instruction, two times a week, will be sufficient to allow the child to meet the goal. Parents need to make sure that the amount of special education is based on their child’s needs, not on the schedules of available teachers.

This section will not usually describe the educational strategies or specific educational programs that will be used. Nevertheless, it is appropriate for parents to ask the teachers at the meeting whether any particular strategies or programs (sometimes called “methodologies”) will be tried. If parents know that a certain type of approach – the “Orton-Gillingham” reading approach, for



example – has worked well, or not worked well, in the past, the parents should share that information with the teachers when the specially-designed instruction is being discussed.

### Least Restrictive Environment

This section identifies the setting in which the student will receive the specially designed instruction. As the individual goals are discussed, the team should be asking the question: “Can the student make progress on this goal if the special education is provided, with proper support, in the regular classroom?” If the answer to that question is yes, then the regular classroom is the “least restrictive environment.” If the answer is no, then the “least restrictive environment” is in another setting. These other settings typically have fewer students and give the teacher more opportunity to modify the lessons to focus on the skills identified in the goals.

Most students can either remain in the regular classroom all day, or go to a special education classroom (also called a “resource” classroom) for some period of the day. A small number of students may need to be in a separate classroom for most or all of the day. An even smaller number may need to be in a special school, in a hospital school, or at home.

After the team has decided the right setting that will allow the student to make progress on each of the goals, then the total amount of time the student will be “restricted” from nondisabled students is added up. Based on the total time, the student is “placed” on what’s called the “continuum of alternative educational placements.” This set of labels is a short-hand way to describe how much time a student is separated from the general education environment. The labels for a student’s “placement” are as follows:

- Regular (80% or more of day with nondisabled peers; sometimes called “mainstreamed”)
- Resource (40% - 79% of the day with nondisabled peers)
- Separate (39% or less of the day with nondisabled peers)
- Separate School, private or public (0% of the day with nondisabled peers)
- Residential School, private or public (0% of the day with nondisabled peers)
- Home / Hospital (0% of the day with nondisabled peers)



For all placements except “regular,” the team must justify the reason that the special education services cannot be delivered in the regular classroom with the use of supplemental aids and services. A justification statement must be included on the IEP.

### Testing Accommodations

This section relates to accommodations that will be made on the standardized tests, such as the End-of-Grade tests and district-wide assessments. This section will also identify alternative tests if they are to be administered instead of the regular tests.

Only certain accommodations are permitted by the state on standardized tests. The following are the most common, though many others exist.

- Student marks in test booklet (instead of on “bubble sheet”)
- Test administrator reads test materials and questions aloud to student (except that only instructions may be read aloud on a reading test; the student must read questions and answers to himself)
- Multiple testing sessions or frequent breaks
- Extended time (team should identify the amount of extra time needed)
- Testing in a separate room (either by student himself, or in a small group)

A full listing of test accommodations can be found on the [DPI website](#).

The alternate test most commonly used is *NCEXTEND1*. This test is administered to students who are not following the standard course of study and are not preparing for continued education after high school. The *NCEXTEND1* may be administered with or without accommodations, just like the regular tests.

### General Accommodations/Modifications/Supplementary Aids and Services

The IEP must identify the various types of support that the student needs to make progress in the overall school environment and in all her regular classes. These supports cover a lot of territory, from the need for a one-on-one, personal aide, to having a seat in the front row to avoid distractions, to having access to a keyboard for notetaking. There is no specific list of possibilities for the team to review. The key for the IEP team is to carefully consider the way the usual school

environment, practices, and rules may need to be different for the disabled student. The team should consider all aspects of the school day, from transportation, to lunch, assemblies, physical education, academics, and extracurricular activities. When certain staff is needed to provide the support, that staff should be identified on the IEP along with the type of support.

### Transition Planning and Activities

Transition planning and activities are designed to prepare the student for education, employment, and independent living after high school. When the student turns 14, the IEP team should begin to include planning for the student's life after high school. When the student turns 16, the IEP must include specific transition activities designed to address post high school (also called post-secondary) goals. Students themselves, along with their parents, are in a particularly good position to make sure the plan focuses on what skills the student needs – beyond what he is getting in high school classes – to be successful after high school. It could be a work experience, learning how to manage money independently and use public transportation, or being prepared to move from the student's current home to a group home. The plan and the activities should be coordinated and sequenced so that the student is ready for the next step when high school ends.

**Transition planning** – Transition planning takes into account the student's interests, strengths, needs, and preferences. Once the student turns 14, the IEP team should identify both formal and informal assessments that will be administered to the student to help the student develop a post-high school plan. One very important aspect of transition planning is the decision about whether the student is preparing for additional education, such as college or other vocational program, or employment or independent living that does not require additional education. This decision will direct the high school course of study. If appropriate planning is not done at the beginning of high school, the student may find himself without the prerequisites needed to move forward as anticipated.

**Transition activities** – Once the student turns 16, the IEP Team should develop appropriate post high school goals in the areas of education and training, employment, and independent living. Not all students will need goals in all areas. Like other IEP goals, transition goals should be measurable. They should support a coordinated set of activities that will allow the student to achieve the goals. Not all of the activities must be provided by the school staff; school staff can

coordinate with other community agencies, such as Vocational Rehabilitation, Driver's Education services, and the like to provide services. It is not lawful for the IEP to identify the parent and student as the only responsible persons to implement the transition goals. School staff must supervise and coordinate services provided by other agencies or the parents.

### Extended School Year Status

At each IEP meeting, the team must address the need for Extended School Year (ESY) Services. ESY services are special education services provided at no cost to parents during the summer, track-out times, or other school vacations. They are provided to a subset of special education students who need those extended services to get a free, appropriate, public education (FAPE). Although some special educators may say so, nothing in the law limits ESY to very low-functioning children who need work on daily living skills. ESY can be focused on academic, functional, behavioral or other skills. The services provided will vary considerably based on the child's needs; ESY is not a set program for a set period of time.

Special education teachers should be keeping data on students so that the team has the information it needs to decide if a child significantly regresses during breaks. Some IEP teams will delay the decision on ESY until the end of the school year so it can look at data collected from the breaks during the school year. If the child's annual review is at a time when there is no data, the team should meet again before the long summer break to consider whether the child should get ESY services.

### Signature page

In some school districts, the last page of the IEP has a place for signatures. (Some districts have eliminated the signature page.) If there is a signature page, everyone present will be asked to sign and indicate their role, such as a parent, special education teacher, speech therapist, etc. Signing does not indicate agreement with the IEP. It indicates presence at the meeting only. Parents who disagree with the decisions made at the meeting can sign without waiving any rights to dispute those decisions. Refusing to sign does not have any effect other than to confuse the record; if a parent is present but does not sign, the record will appear as if the parent was not present.

### IEP Minutes

Minutes are a written record of the discussion of the IEP team. The IDEA does not require that minutes of the meetings be taken. Nevertheless, minutes are typically taken of meetings and included as part of the child's special education file. The minutes need not be a word for word record of what was said, but should accurately capture the main points made during the meeting, and identify who made those points. If no one is identified at the beginning of the meeting as a minute-taker, the parent should ask that minutes be taken. At the end of the meeting, the parent can ask to review the minutes to make sure that they are accurate. If there are any inaccuracies, the parent can request that the minutes be changed. Parents who disagree with any of the decisions made by the team should be sure that their disagreement is reflected in the minutes.

### Prior Written Notice

"Prior Written Notice" is an awkward phrase used to describe the written notice that parents must get describing the major decisions that were made by the IEP team. It isn't "prior" to anything in particular; in fact, it is a notice produced after a decision is made, giving parents the right to dispute that decision through mediation or a due process appeal. The date of a "prior written notice" is important because it starts a deadline. Parents have a year from that date to start any formal dispute resolution process. For more information on dispute resolution, see the [IDEA Dispute Resolution](#) section of this Guide.

### Completed IEP document

Following its completion by the IEP Team, the IEP must be implemented. That means it must be distributed to all school personnel that may be involved in its implementation. That usually includes all the child's teachers, including art, music, PE, social studies, science and other teachers; it also could include bus

*Parents should check to make sure that all the school personnel who regularly interact with their child have a copy of the IEP and understand their role.*

drivers, guidance counselors, the school nurse, and school administrators. If behavior is an issue due to a disability, the school resource officer should also have a copy of the IEP and some guidance from special education staff about the nature of the child's disability and how it could affect behavior. Parents should check to make sure that all the school personnel who regularly interact with their child have a copy of the IEP and understand their role.

### Amended IEP

While most IEPs last for one calendar year, some are amended during the year. Minor amendments may be made by agreement between the parent and a school representative without having a full IEP meeting. Significant amendments – those that change the goals or the child's placement -- typically require a full team meeting. The team may decide to meet to revise the IEP because the child is not progressing as expected or other issues have arisen. When very substantial changes are made, a new IEP is developed and will begin its year of duration at the time of the meeting. New or amended IEPs should be distributed to the school personnel who got the original IEP.

## PART II

### CHAPTER 6 • School Discipline

When students at school break school rules, they can be disciplined by school staff. According to data collected by the NC Department of Public Instruction, students with disabilities are suspended from school nearly twice as often as nondisabled children. Therefore, it is important that parents understand the process and some special protections that apply to students with disabilities who have behavior issues.

All students are expected to follow the school rules that are described in the school district's "Code of Student Conduct." The Code of Student Conduct is typically reviewed with students during the first week of school. It is also available on the website of the school district and/or the child's school. Because students with disabilities are at a greater risk of discipline, parents should make sure their children understand what behavior is expected of them in school and what is against the rules.

The term school discipline refers to a range of responses to students who violate the rules set out in the Code of Student Conduct. Inside the classroom, teachers manage most of the needed discipline, by redirecting and warning students who are misbehaving or disrupting the class. The principal or assistant principal is involved with more significant discipline, especially discipline that involves a student being removed from the classroom or the school building (i.e., suspended), or being subject to corporal punishment (i.e., paddled).

Alternatives to suspension are gaining greater support in North Carolina school districts. Examples of alternatives to suspension include behavior contracts, peer mediation, in-school suspension, training in conflict resolution, after-school detention, loss of privileges, school or community service, and restorative justice practices.

#### State Law

North Carolina state law includes a section about school discipline ([Article 27 of Chapter 115C of the NC General Statutes](#)), setting out the basic requirements. The law allows each school district and charter school to develop its own discipline policies, so long as they are consistent with the state law. Following are some of the most important aspects of state law:

- School districts are encouraged to minimize the use of discipline that removes children from school and to use alternatives to suspension.
- School districts are permitted to suspend students at all grade levels. The ranges are short-term suspension (from 1 – 10 school days), long-term suspension (from 11 school days through the end of the school year or halfway into the next school year if the offense occurs in the fourth quarter), 365-day suspension, or permanent expulsion.
- School districts may allow corporal punishment (i.e., paddling of children) to be used, but must allow parents to opt-out of the use of such punishment. Note: Only four school districts in North Carolina use corporal punishment. They are Robeson, Graham, Macon, and Swain school districts.
- Principals have the final authority to suspend children for up to 10 school days. These “short-term” suspensions are not appealable.
- Principals have the authority to recommend suspensions of more than 10 school days to the superintendent; only the superintendent has the authority to impose these longer suspensions.
- Principals have the authority to recommend a suspension of 365 calendar days for a student found to have possession of a gun or explosive at school.
- Parents are entitled to written notice of any proposed suspension by the end of the school day when “reasonably possible.”
- A student who has been recommended for a suspension of more than 10 school days has the right to ask for a hearing to challenge the recommendation. The student may use the hearing to argue that he did not engage in the behavior as charged or that the recommended length of the suspension is not appropriate. The decision made at the hearing may be appealed to the school board.
- Each district has its own procedures for hearings, though they must allow for the student to hear the school’s side of the events and give the student a chance to share his side of the story.
- Students who are long-term suspended must be offered some type of alternative education unless the superintendent provides a significant reason that alternative education is not appropriate or not available.

*Students facing suspension of more than 10 school days have the right to a hearing at which they can hear what the school says they did and have the chance to tell their side of the story.*

### Discipline of students with disabilities

Students with disabilities may be disciplined just as nondisabled students are. Nevertheless, certain additional protections are available for students whose conduct is related to their disabilities.

Students with emotional and behavioral disabilities are especially at risk for breaking school rules. For example, some students, such as those with Autism Spectrum Disorder, may easily misunderstand social situations and respond in an inappropriate way. Students with ADHD may act impulsively, without thinking through the consequences, breaking a school rule. Students with intellectual disabilities may be goaded by more sophisticated students into taking actions that are not permitted at school (like carrying drugs). Students with significant emotional disabilities may not have the control they need to avoid getting in a fight when their anger gets the better of them.

### Responses to behavior in the IEP

If a student with a disability begins to have trouble with behavior, the IEP team should meet quickly to address the situation. The IEP team should consider using any of the following tools to help the child with the behavior challenges:

### IEP goals

A student's IEP can be amended at any time to add a behavioral goal. If, for example, a student is engaging in disruptive behaviors, a goal could be that the student reduces the number of disruptive behaviors each week from an average of five disruptive acts to an average of one disruptive act. To give the child the tools he needs to make progress on the goal, special education services must also be added to the IEP. These services must be designed to help him develop the skills needed to achieve the goal. A system for keeping track of the disruptive behaviors must also be identified and added to the IEP in the section for how the progress on the goal will be measured.

### Daily report card/home school note

Parents and teachers can work together to design a system that keeps track of behavior incidents and provides a communication tool. Various forms and charts are available that allow teachers to mark when the student has behaved appropriately, for example. The form can go home with the child either daily or weekly and require the parent's signature. Meaningful incentives can be included to help motivate the child to meet the expectations, such as a privilege



over the weekend if the child earned a certain number of positive checks during the week. This type of system has been shown by research to be effective with children who have ADHD. Here are a links to a couple of the many sites on the internet that discuss daily report card systems: <https://www.verywell.com/how-to-use-a-daily-report-card-20840>; <http://www.myadhd.com/gwtg/gwtg3000dailyreportmanual.html>.

### Functional Behavioral Assessments and Behavior Intervention Plans

Functional behavioral assessments and behavioral intervention plans can be used to address behavioral issues. The law requires that they be used at certain times, but the child's team can decide to use them any time they would be helpful.

#### Functional Behavioral Assessment (FBA)

A "functional behavioral assessment" or FBA is formal process for helping teachers and parents understand the causes of a child's behaviors. This assessment should be done by a trained staff person over a period of several days or even weeks. The assessment should not be done by the child's teacher.

A good FBA follows a structured process. The steps are as follows:

- Identify the problem behaviors;
- Through observation, collect data about the behavior;
- Identify the function of the problem behavior; and
- Develop a theory that explains why and when the child misbehaves.

After the data has been collected, the child's IEP team should meet to review the data and try to come to a common understanding of the behavior. The team should focus on what seems to trigger the misbehavior, the setting where the misbehavior occurs, and what might be the reason for or the function of the misbehavior. For example, a child might be misbehaving because he is bored, angry, overstimulated, overwhelmed, hungry, frustrated, disrespected, or depressed. He may need more attention, less attention, more challenging work, less difficult work, an escape, or an emotional outlet. Once the team understands the behavior, it is better equipped to develop a response to it.

#### Behavior Intervention Plan (BIP)

A Behavior Intervention Plan or BIP is a plan designed to support the child so he can behave in more acceptable ways. As the name implies, the primary purpose of a BIP is to identify interventions, not punishments. Interventions can be

designed to alter the environment, minimize the triggers, or give the student an alternative strategy. The plan might identify meaningful incentives or rewards, or provide an opportunity for the student to avoid situations that cause anxiety or distress. Interventions can include changing the responses of the adults as well. The idea is to help the student get what he needs so he will be less likely to misbehave. Interventions are typically put into place by the classroom teacher.

The child's BIP should be put into writing and then implemented on a consistent basis. Data should be kept so that the success of the plan can be determined. After a period of time, usually every 4 – 6 weeks, the team should get together to review the plan. Parts of the plan that are not working should be revised; the parts that are working can be continued. Ideally, after a period of time, the child will no longer need the plan to remain in place.

While FBAs and BIPs can be used anytime the student is having repeated behavior problems, they must be used if the student has been suspended for more than 10 days in a school year. Also, if a student is facing a suspension that will put him out of school more than 10 days, but already has a BIP, it should be reviewed and revised by the student's IEP team.

For more resources about FBAs and BIPs, see [LDOnline](#) and [Center for Effective Collaboration and Practice](#).

### Manifestation Determination Review (MDR)

A special meeting of the student's IEP team is required when a student is facing suspension of school for more than 10 school days. Called a Manifestation Determination Review, or MDR, the meeting focuses on whether the behavior leading to the suspension is related to the child's disability. The law protects students with disabilities from being suspended for long periods of time if the misbehavior is a "manifestation" of the disability.

Even though the basic idea – that children should not be punished for being disabled – is fairly simple, the MDR law is very complicated. Even the school officials who have to hold the MDR meetings have trouble with all the terminology and the requirements.

### The Timing of the MDR

An MDR must be scheduled if the student with a disability could be out of school for more than 10 days in a school year. These 10 days can be altogether, or can

be an accumulation of 10 days due to several short-term suspensions. If a student gets a notice that the principal is recommending a long-term suspension, such as from the day of the offense to the end of the semester or school year, then an MDR must be scheduled within 10 school days of the first day of the suspension. The suspension can go into effect during that 10-day period. But if the MDR doesn't get scheduled during that first 10 days, then the student should be allowed to return to school until the MDR can be held.

If a student is facing a short-term suspension, which when added to previous short-term suspensions will add up to more than 10 days of suspension in that school year, then an MDR must be scheduled. The MDR should be held before the 10<sup>th</sup> day of suspension, counting the previous suspensions. This can sometimes be difficult to schedule, especially if the student was already suspended eight or nine days previously. If the MDR cannot be scheduled before the student is out of school for more than 10 days total, then the student must be allowed to return to school until the MDR can be scheduled. (An exception to this rule occurs if the principal decides that the multiple short-term suspensions do not form a "pattern." Multiple short-term suspensions will be found to form a "pattern" if they are for similar behaviors or are similar because of their length, frequency, or timing. For example, if all the short-term suspensions were for "disrespectful" or "disruptive" behavior, or happened over a reasonably close period of time, then they would form a pattern. On the other hand, if one suspension occurred at the beginning of the year for fighting, and the second suspension occurred at the end of the year for stealing, the principal could decide there is no pattern, even if the two suspensions add up to more than 10 days. In that case, an MDR would not be required.)

### The MDR Questions

Two questions must be answered at an MDR. Both are designed to determine whether the student may be suspended. The student may not be suspended when the team decides that the misconduct was a "manifestation" of the disability.

The first question is whether the conduct that led to the suspension was caused by or substantially related to the child's disability. In order to answer that question, the team must look at what the conduct was, the nature of the student's disability, the student's past behaviors, and any other relevant information. The team should be sure to look back at the student's most recent

evaluation to see how the symptoms of the disability were described. The team can consider both parts of the question together; in other words, they can talk about whether the behavior was caused by *or* substantially related to the disability as one question. If the IEP team finds that the behavior was caused by

*If the conduct leading to the suspension was either  
-- caused by or substantially related to the child's disability, or  
-- the result of the school's failure to do something the IEP requires,  
then the conduct is considered a "manifestation" of the child's disability and the child may not be suspended.*

or was substantially related to the disability, then the behavior is considered to be a "manifestation" of the disability and the student may not be suspended.

The second question is whether the conduct was the direct result of the school's failure to implement the student's IEP. For example, if the

student's IEP requires that the student have a one-on-one behavioral aide, but the behavioral aide was not present on the day of the misbehavior, it is likely that the conduct was the direct result of the school's failure to implement the IEP. If other services designed to respond to the student's misbehavior were not in place, then it could be said that the conduct was the direct result of the failure to implement the IEP. If the conduct was the result of the school's failure to implement the IEP, then the behavior is considered to be a "manifestation" of the disability and the student may not be suspended.

### The Results of the MDR decision

If the IEP team finds that the student's behavior was a manifestation of his disability, the student should go back to school. The team should consider changes to the student's IEP that will help the child avoid misconduct in the future. The IEP team should also conduct a Functional Behavioral Assessment (FBA) and develop a Behavior Intervention Plan (BIP) unless the school has already conducted an FBA and BIP, in which case the IEP team should review the child's BIP and modify it, as necessary, to address the behavior.

There are three exceptions to the rule that the child must return to school if his behavior is a manifestation of his disability. A school can suspend a student with

disabilities for up to 45 school days, even if the student's action was a manifestation of the disability if:

- The student had a weapon at school or at a school function;
- The student had illegal drugs at school or at a school function; or
- The student seriously injured another person at school or at a school function.

However, even if one of these conditions exists, and the student cannot return to school, the student is still entitled to education, just in a setting other than his regular school (either in an alternative learning program or setting or at his home). At the end of the 45 days, the student should be returned to his original school placement unless his placement is changed by the IEP team at an IEP meeting.

If the IEP team finds that the student's behavior was not a manifestation of the disability, then the discipline process may proceed. The student may still appeal the suspension just like any student can (as described earlier in this chapter). Also, even though

*Students placed in a homebound setting must have their placement reviewed every 30 days to see if a less restrictive setting could be used.*

suspended, the student is entitled to continue to receive education. The education must be provided in another setting, which could be in an alternative school or in a "homebound" setting. If it is in a "homebound" setting, the setting must be reviewed by a member of the IEP team every 30 days to determine if a less restrictive setting could be used.

The team's decision about whether the student's conduct was a manifestation may be challenged by the parents if they disagree. Parents may use one of the dispute resolution tools described in the [IDEA Dispute Resolution](#) chapter of this Guide. An expedited appeal process is available in due process appeals that involve MDR decisions.

## PART II

### CHAPTER 7 • IDEA Dispute Resolution

#### Introduction

The Individuals with Disabilities Education Act (IDEA) entitles children with disabilities to a free, appropriate public education (or “FAPE”) in the least restrictive environment (referred to as “LRE”). Because of the vagueness of those terms, parents and school officials sometimes disagree on what special education services and placement a child should receive under the law. What the parents might see as appropriate for their child might be something different from what school personnel think is appropriate. Likewise, there can be varying points of view on which placement represents the least restrictive environment for a particular child.

#### Informal Resolution

Most disputes can be resolved through informal means, such as parent-teacher conferences or IEP meetings. Parents should raise issues respectfully and clearly, and work with school personnel to come to an agreement on what the child needs. The focus must remain on what the child needs to make progress. When the child’s progress remains at the heart of the conversation, the parents and school personnel can usually come to an agreement.

Parents should keep in mind that while they are given the right to be part of the discussion, they do not have the right to micromanage the teachers and insist on particular educational strategies. They do not have the right to demand that teachers be fired or moved to other classrooms. They do have the right to demand progress, though. If school personnel are not responsive to making changes when the child is making little to no progress, then it might be time for the parents to take advantage of one of the more formal dispute resolution tools.

*When the child’s progress remains at the heart of the conversation, the parents and school personnel can usually come to an agreement.*

#### Options for Parents

Recognizing the potential for disagreements between parents and school personnel, the IDEA provides several dispute resolution tools to help resolve differences of opinion. This section describes those tools and suggests when parents or advocates should use

them. The formal tools are: ***facilitated IEP meetings, mediation, state complaints, and due process***. This section briefly outlines each mechanism.

*Before choosing the tool to use to resolve the dispute, parents should think carefully about what they want to achieve and what the desired outcome of the process is.*

Before choosing the tool to use to resolve the dispute, parents should think carefully about what they want to achieve and what the desired outcome of the process is. Unfortunately, the clock cannot be turned back; there can't be a "do-over" of the past school year. Also, the law does not allow for "money damages" similar to what can be awarded in medical malpractice cases. That means parents cannot get money to compensate for the failure of the school district to provide a free, appropriate public education (FAPE) to their child.

On the other hand, parents can be reimbursed for out-of-pocket expenses for private school or private tutoring if they can prove that the school district did not provide a FAPE to a child. In addition, school districts may have to pay tuition in the future for private schooling or related services. Finally, school districts may have to provide "compensatory education" to a child if the education provided was not appropriate. Compensatory education can be tutoring, therapy, group instruction, or other services the child should have been provided but wasn't. The goal of compensatory education is to put the child where she would have been if appropriate services had been provided. School districts may also have to change a child's placement or provide services in the future, if the facts show that those changes are needed to assure the child's progress.

Again, when deciding how to approach a dispute, parents should think carefully about what they want to achieve. Some outcomes are more likely than others, depending on how the dispute is approached. This section should help parents decide what might be the most useful of the dispute resolution tools to use.

### Facilitated IEP Meetings

A facilitated IEP meeting is a meeting at which a trained, neutral person – a facilitator – leads the meeting. During a facilitated IEP meeting, the facilitator helps guide the meeting by making sure that everyone has an opportunity to speak and that the meeting remains focused on the important issues. The facilitator may question IEP team members to get all the needed facts on the table and help each member of the IEP team, including parents, communicate in the best way possible. The facilitator is selected by and paid by the NC



Department of Public Instruction (NCDPI) at no cost to parents and schools. The facilitator does not take the school's side or the parent's side and does not make any decisions. Instead, the facilitator helps the IEP team come to a solution that everyone agrees on.

Facilitated IEP meetings are particularly useful when parents feel as though they have not been heard by the other members of the IEP team or when a strained relationship between parents and school personnel has prevented productive IEP meetings. They are useful when parents want future changes to the IEP, such as more services, classroom accommodations or modifications, or a change in the setting in which the child is served.

*Facilitated IEP meetings are particularly useful when parents feel as though they have not been heard by the other members of the IEP team or when a strained relationship between parents and school personnel has prevented productive IEP meetings.*

Facilitated IEP meetings can be effective if the IEP team has not made a final decision, or has made a decision that the parent disagrees with but the team members are open to additional conversation at a follow-up meeting. On the other hand, if the team has had a full discussion of the issues and it is clear that a final decision has been reached, it may be too late to ask for a facilitated IEP

meeting. At that point, other dispute resolution tools should be considered.

To request a facilitated IEP meeting, parents must complete the "[Request for Facilitated IEP Team Meeting](#)" request form. The form must be presented to NCDPI, either by mail, fax, or e-mail, in accordance with the instructions on the form, at least 10 school days before the meeting. Both the parent and the school district must agree to having a facilitated meeting. Both must agree to the "ground rules" established by the facilitator, such as sharing information with the facilitator before the meeting and committing at least 3 – 4 hours for the meeting.

### Mediation

Mediation is a process in which a mediator helps to resolve a dispute between parents and the school district over their child's special education program. A mediator is a trained, neutral person who will help guide the participants toward a solution to a disagreement. If mediation is successful, the parents and school district will sign a written agreement that will bind everyone in the future. A



successful mediation will not only solve the current disagreement, but may set up a better working relationship between the parents and the school district in the future.

Either the parents or the school district may propose mediation. The state department of public education (NCDPI) administers the program by training mediators and making them available at no cost to the parents or school. Both the parents and the school district must agree to participate, and everyone must agree that what is said during a mediation is confidential.

Unlike an IEP meeting, a mediation typically involves only a few people. The school district will select one or more people to participate; at least one of them must have the authority to enter a binding agreement with the parents. If parents want someone else to be with them (such as a friend, advocate, attorney, or other professional), the parents should discuss that with the mediator ahead of time and make sure everyone is in agreement about who will be there.

### The Mediation Process

After mediation is requested, and both sides agree to participate, the mediator will arrange a meeting between the parents and school representatives. The mediator will assist those involved in having a productive conversation about the points of disagreement. Sometimes, the mediator provides a structure that allows everyone to communicate with each other directly and think creatively together about ways to settle the dispute. Sometimes, the mediator will separate the parents from the school personnel and go back and forth between them, helping to explain each side's position to the other side and suggesting possibilities for agreement. The mediator does not make any decisions or force either side into a decision. Sometimes, however, the mediator will express an opinion about the position that someone is taking, noting whether the position seems consistent or inconsistent with the IDEA. That helps both sides understand their potential legal position should the mediation fail.

*Mediation is a good step when parents disagree with a final decision of the IEP team but want to try to resolve the issue without having to file a due process petition.*

Mediation is a good step when parents disagree with a final decision of the IEP team but want to try to resolve the issue without having to file a due process petition. Examples of the types of issues that can be mediated include the following:

- Whether a child is eligible for special education;
- The amount or type of special education or related services provided;
- The setting in which the child receives both general education and special education services, including in private schools;
- The child's entitlement to "compensatory education" to make up for a past lack of appropriate services.

Typically, mediation is attempted prior to the filing of a due process petition, but it can be requested following the filing of due process. If an agreement is reached, then due process can be avoided or withdrawn. An agreement reached through mediation is enforceable in court. This means that neither the parent nor the school district must go through an administrative due process hearing to have the agreement upheld if the agreement is not followed.

What is said in mediation is *confidential*. That means that if the case goes on to a due process hearing, no one can testify about what someone else said in the mediation.

### For more information

To request mediation, parents should complete the [Mediation Request form](#). It must be submitted to NCDPI according to the instructions on the form.

For tips on how to prepare for mediation, see Preparing for Special Education Mediation and Resolution Sessions: A Guide for Families and Advocates. You will find a link to the guide on [this website](#).

### State Complaint

A state complaint is a written request to the Department of Public Instruction (NCDPI) asking for an investigation of the actions of a school regarding a special education student. It can be filed by a parent or anyone else. To be accepted for investigation by NCDPI, the complaint must show that a school district violated special education law or policy within one year prior to the filing. After its investigation, NCDPI will issue a written decision on whether the school violated any rules. If it determines that violations occurred, it can order "corrective

action” and training for school district staff so that violations of the law do not occur again.

### How to File a State Complaint

A state complaint from a parent should include a factual description of what occurred, an explanation of what law or policy was violated, and what the parent wants to happen as a result of the complaint. The complaint can be in the form of a letter, or can be included on the [Model Form provided by NCDPI](#). If they can, parents should attach written records that prove the violation(s). In the course of its investigation, the NCDPI investigator will reach out to the school district and the parent, giving each a chance to provide additional information. NCDPI is required to complete its investigation and issue a decision within 60 days of getting the complaint.

The following are some examples of the types of complaints that will be investigated by NCDPI:

- The services described on the IEP, including related services such as speech therapy or special transportation, were not provided according to the plan;
- The school did not evaluate the child and hold an eligibility meeting within 90 days of the written referral from the parent;
- The school did not help a parent put a request for an evaluation in writing if the request was made orally;
- The IEP did not offer the services needed to provide the child with a free, appropriate public education;
- The child’s special education services were terminated without an evaluation and meeting;
- The IEP team failed to try educational supports in a regular classroom before deciding that the child needed to be in a separate special education classroom;
- The IEP team failed to consider all placement options – including private school – before deciding to place a child at home;
- The small number of hours of instruction during a homebound placement failed to provide a free, appropriate public education, resulting in a lack of progress;
- The IEP team failed to create a meaningful transition plan for a student aged 16 or older, leaving the student unprepared for life after high school;

- The school suspended the child more than 10 days in a school year for behaviors caused by the child's disability;
- The school failed to provide the child's school records upon request by the parent.

Parents should be sure to sign and date the complaint and keep a copy. Parents must also send a copy to the school district or charter school against whom the complaint is made. Either the school or the parent can approach the other about resolving the issues between themselves or with the help of a mediator. If they solve the dispute that way, the complaint must be withdrawn and the state investigator will not issue a decision. If attempts at arriving at an agreement between the parties fail, then the state will continue its investigation and issue a decision.

### ***For more Information***

Procedures for filing a state complaint can be found on the [DPI website](#).

### **Due Process**

Due process is a formal, legal process for resolving disputes about special education issues. A "due process petition" begins a proceeding that ends with either a settlement (i.e., agreement between the parent and the school district) or a decision by an administrative law judge. Due process cases can address almost any issue related to the child's special education rights: eligibility, evaluation, placement, appropriate services (i.e., FAPE), and manifestation determinations. The due process petition must include the facts that support the case, a statement of what law was violated, and the result desired. The petition can be filed by the parent of a special education student, or the student himself if he is 18 or over. School districts can also file due process petitions. If the issues are not settled, a court-like hearing will be held. Testimony will be taken from witnesses, records will be submitted as evidence, and a judge will make a decision.

In North Carolina, due process cases are heard in a special court known as the Office of Administrative Hearings. While it is not required that the parents have an attorney, it is very difficult for parents to handle a case on their own due to the many court rules that must be followed. There are detailed requirements for what must be in the petition and how the case proceeds after the petition is filed. Further, in most situations, cases cannot be won without testimony from at least one expert witness about the issues that are in dispute. The entire process can

last for many months; the actual hearing itself can last from a couple of days to a week or longer. If the parents are ultimately successful, they can be reimbursed for attorney fees by the school district, but not for the fees of expert witnesses. If the parents are not successful, the school district can ask a court to force the parents to pay for its attorney fees. The school district has to show the court that the parents' case was "brought for an improper purpose, such as to harass, cause unnecessary delay, or to needlessly increase the cost of litigation."

### When to File Due Process

Due process should be reserved for significant disputes that have not gotten solved with less formal tools. Nevertheless, parents should not wait too long to file: the Petition must be filed within one year of when the parent knew or should have known about the problem that is the subject of the case. For

*Due process should be reserved for significant disputes that have not gotten solved with less formal tools. The Petition must be filed within one year of when the parent knew or should have known about the problem that is the subject of the case.*

example, if a student's eligibility for special education was denied on September 30, 2016, then the parents can file a due process petition challenging that denial any time until September 29, 2017. It is more difficult to determine when the due process petition must be filed when the issue is that the child is not making reasonable progress. There often isn't one particular date on which the parents first recognized that

the child wasn't making reasonable progress or that the child was not being provided appropriate services. One way to manage this is for the parents to ask for an IEP team meeting, even if it's not time for the annual review, at which they can ask for additional services or a change in placement. If the IEP team does not change the IEP as requested by the parents, the date of the meeting can start the one-year time period. If the IEP is changed, then the parents should watch carefully for signs of progress or lack of progress. As soon as they see a sustained lack of progress, they should mark that date and use it as the date that begins the one-year period during which a due process case can be filed. (Note – the one-year time period is sometimes called the "period of limitations" or the "statute of limitations.")

### The Due Process Rules

After a parent files the Due Process Petition and provides a copy to the school district and NCDPI, the school district must file a written response to the Petition. It must also schedule a “Resolution Session” within 15 days of receiving a copy of the petition. This process, which is described in more detail below, is a required settlement conference. If a settlement is reached, then an agreement is signed and the due process case is ended. If a settlement is not reached, then the case proceeds. In most cases, the parents and the school district then exchange records and witness lists. The judge will set an initial hearing date, usually within 30 days after the Resolution Session. The hearing is often postponed, however, for several months.

*The parent has the “burden of proof,” which means that the parent must prove, through the testimony and other evidence, that the child was not provided with a free, appropriate public education or the child’s rights were otherwise violated.*

At the hearing, both sides will have an opportunity to testify, to call witnesses to testify, and to provide documents to support their positions. Oral and written arguments are also received by the judge. The parent has the “burden of proof,” which means that the parent must prove, through the testimony and other evidence, that the child was not provided with a free, appropriate public education or the child’s rights were otherwise violated. Again, because of the complexity of a due process hearing, it is very difficult for parents to prevail without the assistance of an attorney and expert witnesses. The school district will almost always have an attorney, whether the parent has one or not.

The administrative law judge can either deny the claims in the petition, or grant some, or all of the relief requested by the parents. The judge can order the school district to provide “compensatory education” to the child, or can award the parents reimbursement for money spent on private school tuition. Other than this reimbursement money, a judge can never award money damages to the parents or the child.

Certain problems cannot be resolved through due process because the judge has no authority over them. The judge cannot order that certain staff be fired, and,

for the most part, the judge cannot order that a child be assigned to a particular teacher or school building. Issues of teachers and buildings can get tricky when they relate to the child's special education placement (i.e., issues of the least restrictive environment), but in general those issues are outside the authority of the judge.

### Private School Placements and Tuition Reimbursement

A few special rules apply when parents are asking for tuition reimbursement for private school. These cases arise after parents have become dissatisfied with the special education being offered by the public school and enroll them in a private school. The school district may be obligated to pay the tuition for the private school, but only if the parents provided the school notice of their intent to enroll their child in private school at the most recent IEP meeting or at least 10 business days before the child is removed from public school.

*The school district may be obligated to pay the tuition for the private school, but only if the parents provided the school notice of their intent to enroll their child in private school at the most recent IEP meeting or at least 10 business days before the child is removed from public school.*

At the due process hearing, the parents will be required to prove the following: 1) the school district did not make a free, appropriate public education available to the child before the child's removal from public school; and 2) the private school is appropriate for the child. Parents must pay the tuition themselves, and then seek reimbursement through the due process hearing. If they are unsuccessful, then they will not be reimbursed for the tuition.

### Resolution Session

A resolution session is a mandatory meeting between parents and school district officials following the filing of a due process petition. It is designed to give the parties a chance to talk face-to-face to try to reach agreement about the case before a due process hearing.

The school district must schedule and hold the session within 15 days of receiving the parents' due process case. The people who must attend a resolution session are the parents, members of the IEP team who know about the issues in dispute, and a representative of the school district who has decision-making authority. Parents are asked to tell the people at the meeting why they filed the due



process petition and what they want for their child. School personnel can then respond and everyone can talk about ways to resolve the dispute.

If a resolution is reached, a legally-binding agreement is written out for everyone to sign. Both sides have three business days in which to think about the agreement and void it if they change their minds. If they still agree after the three days, then the parents withdraw their due process petition and the terms of the agreement go into effect.

If neither the parents nor the school personnel believe there is a likelihood of resolving the case at a resolution session, they can jointly agree not to meet. However, if the school district does not agree to skip the session, the parents must attend. If they don't attend, the school district can ask the judge to dismiss or postpone the parents' due process case.

Another option is to begin the mediation process instead of going to a resolution session. For that option, school personnel and parents must agree to mediate rather than go through with the resolution session. The main difference is the presence of the mediator to assist the parties in coming to an agreement.

Parents may ask for an expedited resolution session in cases involving school discipline and the results of a manifestation determination review. An expedited resolution session must be convened within seven rather than 15 days.

Attorneys are permitted to participate in resolution sessions, although the school district may not have an attorney participate unless the parent has an attorney. Unlike mediations, discussions at a resolution session are not confidential. Anything that anyone says in the resolution session can be mentioned in a future due process or court hearing.

### **“Stay Put”**

When parents file a due process petition, especially one involving questions about a child's special education placement, a question arises about where the child should be while the case is being decided. The IDEA addresses that question in the “stay put” provisions. The “stay put” provisions require that the child remain in his “current placement” while the case is ongoing. Wherever the child was placed at the most recent IEP will control, unless both the school and the parents agree on something else.



“Stay-put” will not apply, however, if the child brings a weapon or drugs to school or seriously hurts another person while at school or a school function. In this case, the IEP team can change the child’s placement during the ongoing due process case. The alternative placement must still allow the child to have access to his education, including his special education services, but it can be outside the regular school building.

### Reviews and appeals

A final decision by an administrative law judge after a due process hearing may be reviewed by a “Review Officer” appointed by NCDPI. Either party can ask for this review within 30 days after the administrative law judge’s decision is issued. The Review Officer reviews transcripts of the testimony and reviews all the documents that were provided as evidence. The Review Officer can ask for additional evidence. The Review Officer then makes a final decision in the case.

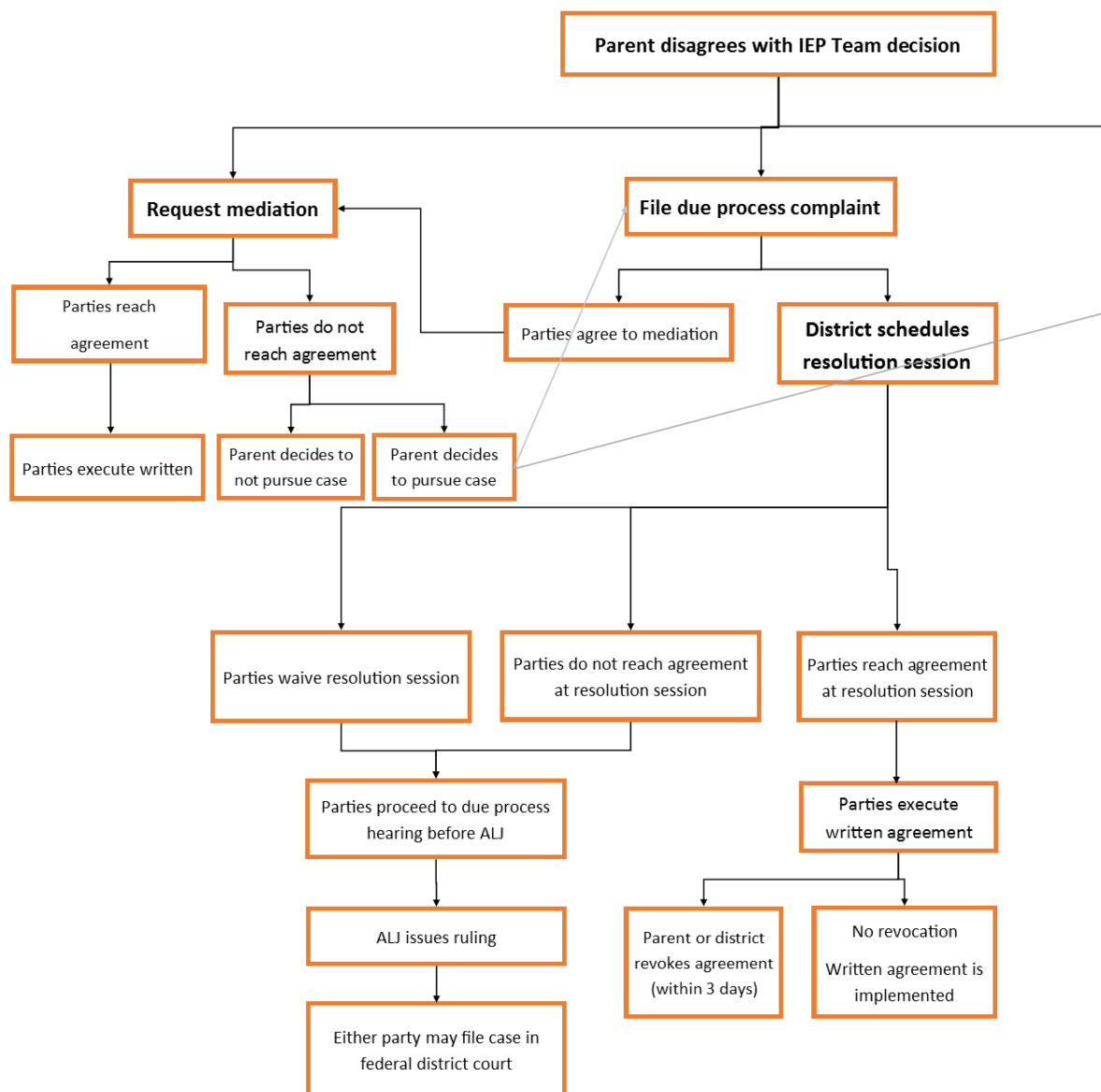
If either the parent or school district is dissatisfied with the decision of the Review Officer, then that party can file a further appeal in court. The case must be filed within 30 days of the final decision of the Review Officer; it can be filed in either state or federal court.

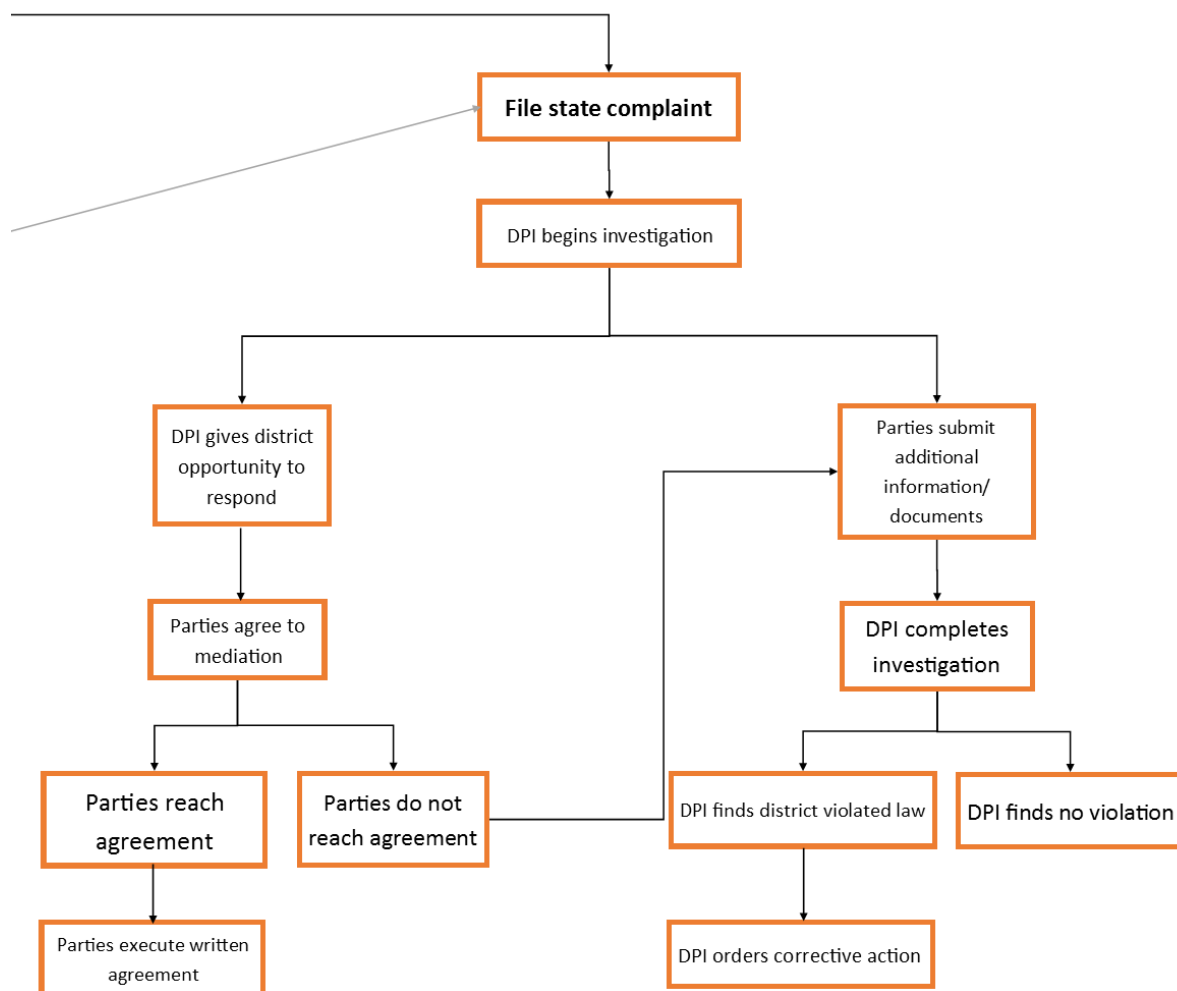
### For More Information

Parents wishing to file a due process case on their own should follow the instructions found on the [DPI website](#), Exceptional Children, Dispute Resolution. A model form is available. The general rules for cases handled by the Office of Administrative Hearings are found at the [OAH website](#).

For tips on how to prepare for resolution sessions please see [“Preparing for Special Education Mediation and Resolution Sessions: A Guide for Families and Advocates.”](#)

## Dispute Resolution Flowchart





## PART II

### CHAPTER 8 • Special Education and Private Schools

Children with disabilities enrolled in private school have various rights with regard to special education services depending on the circumstances of their enrollment. Students are typically in private school because 1) their parents prefer private education and are not seeking assistance with tuition; 2) their IEP team placed them in private school in order to provide a FAPE; or 3) their parents have rejected the IEP offered by the school district and have enrolled them there and they are seeking tuition reimbursement.

#### Child Find

Each local public school district in North Carolina (called a local educational agency – LEA – by the IDEA) is required to identify and evaluate all children with disabilities within its boundaries, regardless of where they are enrolled in school. This includes children, ages 3 to 21, enrolled in private schools or home schools. Children who live in one school district, but go to a private school in another, are to be identified and evaluated by the school district in which the private school is located.

While public school districts have an affirmative obligation to find the children with disabilities that are enrolled in private school, parents who suspect their child may have a disability that interferes with learning need not wait until the district finds their child. They may directly request that the child be evaluated by the public school district by writing a letter (or email) to the special education department within the district asking for an evaluation.

#### Special Education for “Parentally-Placed” Children

Children with disabilities who are enrolled by their parents in private school simply because they prefer private education may be entitled to some special education services at the expense of the public school district. They are not entitled to an IEP, however, or other rights guaranteed to public school students. Instead, the local school district can decide what direct services it will provide to children in private school. Unlike a child enrolled in public school, a child in private school has no individual or enforceable right to any particular set of special education services. Parents are responsible for all the tuition and other expenses associated with private school

enrollment. (See below for state scholarships that may be available to assist with tuition.)

The IDEA requires that each school district spend a “proportionate share” of its federal special education funds on services for private school students. The amount it must spend is determined by the number and location of privately-placed students. The law does not specify how those funds must be spent, however, and different school districts spend their money in different ways. Prior to deciding how to allocate the private school share, local school district officials must consult with private schools and parents of private school children to understand the needs. The district can decide to provide certain services directly, or it can decide to contract with private providers for services. Students who will be provided with special education will get a “services plan” that spells out the services that will be provided. A services plan is less comprehensive than an IEP and there are no specific rules about how often it must be reviewed or revised. Parents have no right to dispute the services plan using the usual IDEA dispute resolution tools.

*Parents who choose to educate their children in private school have no right to dispute the services plan using the usual IDEA dispute resolution tools.*

So long as the parents make clear that they intend to continue to enroll their child in private school, the school district does not need to develop or offer an IEP for the child. If parents wish to consider enrolling their child in public school, they can ask that an IEP be developed for their child so that can make an informed choice about whether to enroll their child in public or private school.

### Special Education for “Publicly-Placed” Children

Sometimes, the IEP team places a child in private school when the public school district does not have the resources or programs it needs to meet the unique needs of a child with a disability. (Note: this is rare in North Carolina, though it happens quite a bit more often in some other states.) When the child is placed in a private school by the IEP team, the local school district continues to supervise the program and the private school must provide a FAPE to the child in accordance with the IEP. The school district pays the tuition and other expenses associated with enrollment, such as transportation costs, fees, uniform costs, etc. Publicly-placed students and their parents retain all the same rights they would have if the child were enrolled in a public school.

### Special Education for “Unilaterally-Placed” Children when FAPE is Disputed

Some parents enroll their children in private school because they are dissatisfied with the IEP offered by the public school and believe that their child cannot get a FAPE when enrolled in public school. Depending on the circumstances, parents may be entitled to tuition reimbursement for the private school enrollment. In order to be reimbursed, parents must prove – typically in a due process hearing – that the IEP offered to the child would not have offered a free, appropriate public education; and that the private school in which the child is enrolled is appropriate and can meet their child’s unique needs. In addition, the parents must give the school district reasonable notice (at least 10 business days) of their rejection of the IEP and their intent to seek tuition reimbursement for a private school enrollment. In these cases, the parents must pay the tuition themselves. If they are unable to prove that the district failed to offer a FAPE, then they remain responsible for the tuition.

### Scholarship Grants for Parentally-Placed Students

Students with disabilities placed in private schools by their parents may be eligible for a scholarship grant from the state of North Carolina for up to \$8,000 per year (\$4,000 per semester) that may be applied to private school tuition or other special education services. In order to qualify, the child must meet all of the following criteria:

- Be under age 22;
- Qualify for an IEP, as if in public school;
- Be entitled to attend a North Carolina public school;
- Have not been placed at a private school by the child’s IEP team;
- Have not obtained a high school diploma or attended post-secondary school on a full-time basis;
- Receive special education services for at least 75 days in the semester for which the grant applies;
- Meet at least one of the following criteria:
  - Was enrolled in a public school the previous semester;
  - Received publicly-provided special education as a preschool student the previous semester;
  - Received a scholarship grant the previous semester; or
  - Qualified for special education prior to the end of the kindergarten or first grade year.

The scholarship grant can be applied to private school tuition, or can reimburse parents for related services and educational technology. Children in homeschools may be eligible for the grants to cover special education, related services, and educational

technology, but the services must be provided by someone other than a member of the homeschooler's household. Parents can apply for the scholarship grants through the North Carolina State Education Assistance Authority (<http://www.ncseaa.edu/>).

To remain eligible for continuing scholarship grants, the student must be reevaluated every three years. The evaluation may be done by the local school district, without charge to the parents; or privately, at the parents' expense, by a psychologist with a school psychology focus. If the evaluation is done by the local school district, the district must verify that the child continues to qualify for an IEP as if the child were enrolled in public school. If the evaluation is done privately, the psychologist must verify that the private school setting has improved the child's educational performance and that the student would continue to benefit from placement in private school.

Parents may also be able to get a voucher through the Opportunity Scholarship Program (OSP) to assist with the payment of private school tuition. The OSP is open to families who qualify financially for the program; it is not reserved for children with disabilities. It is limited to families whose income is less than a set amount. More information is available from the [State Education Assistance Authority, Opportunity Scholarship Program](#).

When a child is removed from public school by parents and is enrolled in a private school, the child and parents waive all rights under the IDEA. The child is no longer eligible to have an IEP and parents have no rights to challenge the educational program as not being appropriate.

## PART III

### CHAPTER 9 • [Frequently Asked Questions](#)

#### [Eligibility for Special Education](#)

How do I know if my child is eligible for special education?

A child needs special education if he has a disability that interferes with learning and, as a result, cannot make adequate educational progress without special help. Children learn at very different rates, especially when they are young. A child who learns a little slower than others may not need special education. But if a child is getting further and further behind, or just can't seem to make progress after she has been in classrooms with good teachers and a solid curriculum, then the child might need special education.

How can I get special education for my child?

In order for a child to get special education, the child must be evaluated and determined by a team to be eligible for special education. The first step for getting a child evaluated is the referral process. This usually starts with a written request by a parent to the principal that the child be evaluated to determine eligibility for special education services. The [Sample Letters](#) section of this Guide has more information on writing a referral letter. Following a referral, the child will be tested (evaluated) by a school psychologist, unless the school personnel determine there is no cause for an evaluation. Then, a group of knowledgeable school personnel will meet with the parent to go over the evaluation and look at the criteria for eligibility. [The Understanding Educational Testing](#) chapter of this Guide has more information about this process.

Can my preschool age child be evaluated and provided special education?

Yes. Beginning at age 3, children can be evaluated by the local public school district. If you suspect that your 3 to 5-year-old child has a disability, then you should request an evaluation from the local school administrator in charge of preschool services. You should make this request in writing. The same timelines, rules, and procedural protections that apply to school-aged children and their parents also apply to preschool children and their parents. For a sample referral letter, see the [Sample Letters](#) section of this Guide.

Like school-aged children, preschool children who qualify for special education are entitled to have an Individualized Education Program (IEP). However, the IEP



does not necessarily have to include a full day of school. Sometimes, preschool children will be offered related services, such as speech or occupational therapy. It is a matter for the child's IEP team to determine what services he needs to get a free, appropriate public education.

Is my child entitled to special education if he attends a charter school?

Yes. The IDEA, federal regulations, and North Carolina policies apply in the same way to charter schools as they do to other public schools. Charter schools, or charter school management organizations, are considered to be "local educational agencies" (LEA), which are the organizations that must implement the IDEA at the local level.

What are the basic requirements for a child to get special education?

There are four basic criteria for eligibility for special education:

- The student must be aged 3 through 21; and
- The student must have a disability that fits into one of the fourteen categories established by the North Carolina Department of Public Instruction; and
- That disability must have an adverse impact on the student's education; and
- The student must require specially-designed instruction to make reasonable educational progress.

The definitions for each category of disability and the specific criteria for each one can be found in the [North Carolina Policies Governing Children with Disabilities](#), Section 1503-2.5(d). DPI also publishes worksheets for each disability that can be used by IEP teams to help them apply the criteria. The worksheets can be found on [DPI's website](#).

What does it mean for a disability to have an "adverse impact on the student's education"?

This phrase is not defined in the IDEA itself, in the federal regulations, or in the North Carolina Policies. A school district will likely recognize an "adverse impact on the student's education" when the child is receiving failing grades in school or is testing as "not proficient" on the end-of-grade tests (EOGs). More difficult cases are those in which the child is able to get passing grades, but does so only because of outside help or because he gets rewarded for effort but is not actually learning the content. Other difficult cases are those in which the child struggles

in areas such as communication, behavior, and social interaction. Because these non-academic abilities, also known as functional skills, are a part of what is taught in school, they are also a part of a student's education. When a child's abilities to communicate, interact, and behave appropriately are not developing as expected as a result of a disability, then the child's disability is said to have an adverse impact on the child's educational performance.

What does it mean that the student must require "specially designed instruction"? In short, it means that the student cannot make reasonable progress when in a regular classroom receiving the same instruction as everyone else. Instead, the student needs a special education teacher to adapt the instruction to meet his unique needs. This can mean adapting the curriculum itself, the teaching strategies, the way the material is delivered, or the setting in which the learning occurs. For example, specially-designed instruction could be a specialized reading program designed for children with reading disabilities, simplified written materials, or visual aids. The ways the instruction can be specially-designed are virtually limitless – it all depends on what a particular student needs to be able to learn the material given the limitations he has because of his disability.

"Reasonable progress" typically means mastering the standard curriculum for the grade and moving along from grade to grade. It can also mean achieving age and grade-level expectations for things like communication skills, social skills, and physical skills. For children with intellectual disabilities, reasonable progress may not always mean being at grade level, but instead may mean moving along well in the development of academic and functional skills in a way that is ambitious but appropriate to their abilities.

Do classroom interventions have to be finished before a child can be evaluated for special education?

No. A parent may refer her child for evaluation any time the parent believes the child needs special education. A special education evaluation can begin at the same time that classroom interventions are being offered. In some situations, it may be beneficial to allow the teacher to try some different approaches in the classroom to see if a child can get past a period of difficulty without going through the evaluation process or being labeled "disabled." These approaches are known by different names, such as "Response to Intervention" (RTI), "Student Assistance Plan" (SAP), "Student Support Team" (SST), or "Multi-Tiered System of Support" (MTSS). Although the law requires that interventions be tried before a

child receives special education for specific learning disabilities, they can be provided during the 90-day period allowed for the evaluation process.

What does the term “discrepancy” refer to?

The term “discrepancy” in the special education context refers to the comparison of scores on certain tests used by school psychologists in evaluations for special education. More specifically, a “discrepancy” is found when there is a significant difference (i.e., at least 15 points) between a child’s IQ score and the child’s score on an achievement test. The IQ score reflects the child’s *expected* level of academic achievement; the achievement test score reflects the child’s *actual* academic achievement. The IQ and achievement scores for typical children are in the same range. When a child’s achievement is significantly lower than the child’s IQ would predict, a learning disability is often suspected.

While North Carolina has been using this “discrepancy” approach to identifying learning disabilities for many years, the approach is changing. As of July 2020, no school district will be permitted to use this approach. Rather, a specific learning disability will be identified by looking at the child’s response to classroom instruction. For more information about IQ and achievement tests, see the [Understanding Educational Testing](#) chapter in this Guide.

What if I think the evaluation done by the school is wrong?

First, parents should discuss any concerns they have about the evaluations of their child with the team members who are gathered to evaluate the child’s eligibility. Parents should explain why they are not satisfied with the testing or its results and ask the psychologist to recommend and perform additional testing to address the issues of concern. If the parents and the school personnel cannot agree about the appropriateness or adequacy of the testing, then parents have the right to request an Independent Educational Evaluation (IEE). An IEE is additional testing performed by a qualified psychologist or other professional who is not employed by the school district. The school district must pay for the additional testing, so long as the cost is reasonable. To get an IEE, a parent should write a letter to the principal or Exceptional Children facilitator expressing disagreement with the school district’s evaluation and requesting an IEE. The parents can choose their own qualified evaluator or ask the school district for a list of professionals who may be available to perform IEEs. Once the parent requests an IEE, the school district must either agree to pay for the IEE, or file a petition to ask an administrative law judge to decide on whether the school must

pay for the IEE. [The Sample Letters section](#) of this Guide includes a sample letter asking for an IEE.

Does my child's disability label determine what special education services she is entitled to?

No. A child's needs determine what special education she is entitled to. There is no one-to-one correspondence between certain disabilities and certain services. In other words, the disability label does not control what services your child should get. Your child's IEP team should look carefully at the areas where she is having problems and determine what services, accommodations, and modifications she needs in order to make progress. Two children with the same disability label may have very different needs. That's why every child with a disability is entitled to an individualized education program.

Is my child limited to having only one category of eligibility listed on his IEP?

No. A child can have more than one category of eligibility listed on her IEP. Teams usually choose a "primary" area of eligibility and a secondary one. There is also a category for students who have multiple disabilities.

Does a doctor's diagnosis determine my child's category for special education purposes?

No, but the information about the doctor's diagnosis should be considered by the team determining eligibility. There can be differences between the criteria used by doctors to diagnose a particular condition and those used by the eligibility team in determining the need for special education. Most importantly, for special education purposes, there has to be a finding that the child's disability has an *adverse effect on his education and that he requires specialized instruction to make reasonable educational progress*. That determination must be made by the eligibility team, not a doctor.

Does my child have to fail a grade or his classes to be eligible for special education?

No. A child does not have to fail a grade or his classes to start the special education evaluation process, and "failing" is not a criterion for eligibility under the IDEA. However, there must be evidence that the child's disability is getting in the way of educational progress and that the child needs special education to make reasonable progress. If a child is at grade level and moving easily from grade to grade without any special support, then the child does not likely need special education. If the child is only passing because the parents are providing a

great deal of support at home or have hired tutors for the child, then he might need special education.

Can my child get special education to address only non-academic needs, such as behavior, organization, or daily living skills?

Yes. Some disabilities result in problems with “functional” skills. Functional skills are those skills that are not strictly academic, but are necessary to engage in routine activities of daily living and school progress. Functional skills include social interaction, communication, organization, ability to focus, behavior, personal care skills, mobility, adaptability, etc. All of these skills are needed to make good progress in school. If your child’s disability is getting in the way of progress in these areas, then your child should be eligible for special education to develop those skills, even if your child does not need special education in academic areas. For example, a child with ADHD might not need help with a specific subject. Instead, he might just need help with concentration, organization, and behavior. For a child with ADHD, he could get special education that focuses on improvement in organization and behavior rather than reading or math.

Does my child’s condition have to be permanent for her to be eligible for an IEP?

No. The law does not require that a child’s disability be permanent in order to qualify for special education. A child is entitled to an IEP if he has one of the 14 listed disabilities, and that disability interferes with educational progress. If the child meets these requirements, it does not matter that the child’s condition may be temporary. For a child with a temporary disability, such as an injury, a “504 plan” might be appropriate if he requires accommodations but does not need specialized instruction. For more information about 504 plans, see [Special Education Concepts](#) chapter of this Guide.

Once my child has qualified for special education, will he continue to get the services throughout his time in school?

Not necessarily. A child must continue to meet the eligibility requirements for special education to continue receiving the services. School districts should reevaluate all children receiving special education services at least once every three years. When the reevaluation occurs, the team will look at whether your child still qualifies for special education. If your child no longer fits into one of the 14 eligibility categories, or if he no longer needs special education to make reasonable progress, he can be “exited” from special education. Even if it is not time for the regular reevaluation, a child can be reevaluated if you, or a member

of your child's IEP team, question your child's continuing eligibility. A child cannot be exited from services without an evaluation unless you, as the parent, withdraw consent for continued services. If you disagree with a decision to exit your child from special education services, you can challenge the decision in a due process hearing. For more information about due process hearings, see the [IDEA Dispute Resolution](#) chapter of this Guide.

If my child remains disabled, how long can she continue to get special education? As long as a child remains disabled, she can continue to receive special education until she graduates with a regular high school diploma or until the end of the school year in which she turns 22. A question may arise when a student who has earned a diploma in the Occupational Course of Study (OCS) wishes to continue to receive special education services. Because the Occupational Course of Study is not the same as the Standard Course of Study, those students may be able to continue in special education after completion of OCS. Parents and students should discuss the student's needs with the student's IEP team.

### [Special Education Services and IEPs](#)

If my child is determined eligible for special education, what does she get? A child who is eligible for special education is entitled to an Individualized Education Program (IEP). An IEP is a written statement that spells out the various aspects of the child's special education services. The IEP must include:

- A description of the student's current levels of achievement or performance;
- Annual goals in the child's problem areas;
- A description of how the child's progress on the goals will be measured;
- A statement of the special education services and related services that will be provided to the student;
- A statement of the setting in which the child's special education services will be delivered;
- A description of any classroom and testing accommodations that the child needs;
- A description of how assignments or materials will be modified; and
- For children aged 16 and older, a plan for how they will transition from high school to post-high school.

For more information about IEPs, see the chapter in this Guide called [Approaching IEPs and IEP Meetings](#).

How are IEPs developed? Who are the required members of an IEP team?

IEPs are developed by a child's IEP Team during an IEP meeting. A child's IEP team is made up of any number of people who know about the child and the child's needs. The core members of any IEP team are the child's parent, the child's regular education teacher, the child's special education teacher, and someone who represents the school district in which the child attends school (often called the "LEA representative," with LEA referring to "local educational agency" which is the technical term for a school district or charter school). Other members of the team could be the child, service providers (such as a speech language therapist or an occupational therapist), school psychologist, school administrators, parent advocate, grandparent, or anyone with special knowledge of the child's needs that can contribute to the development of the IEP.

How do I know if my child has a good IEP?

A good IEP is one that gives a child with a disability the ability to make reasonable educational progress. For students with average intellectual ability, "reasonable progress" usually means mastering the standard course work for the student's grade and passing from grade to grade. A good IEP should contain a specific description of the child's "present level of performance" in each area where the child struggles. It must also include a related annual goal for that area. The goal should be written in a way that, if achieved, would show a reasonable amount of progress on the skills addressed in the "present level of performance." It should also be written in a way that is easy to measure. Here are a few additional pointers:

- The special education services should be enough to give the student the amount of support she needs to reach the goal. For instance, if a child is struggling to read, but gets only thirty minutes a week of special education services in reading, she probably will not make enough progress to reach her reading goal. Or, if the child has problems with organization, study skills, or behavior, but there are no special education services dedicated toward her improvement in these areas, she probably will not make progress.
- The IEP should identify classroom, assignment, and testing accommodations that will help the child overcome the difficulties caused by her disability. Such accommodations should help the child learn and show what she's learned by limiting the impact of the disability. For example, if the child understands material that is read to her, but does not understand if she tries to read it herself, then she should have audio



versions of reading material in addition to having special education support to learn to read the material herself.

- The child should be receiving the special education services in the “least restrictive environment.” This means she should be in regular classes – and get her special education there – so long as she can learn and make progress in that environment. If she cannot progress in the regular classroom, then she should be pulled out of that classroom for the least amount of time that will allow her to make progress.

What if I don’t think the IEP is maximizing my child’s potential?

A school does not have to *maximize* a child’s potential to comply with the law. However, the law does require that a school ensure that each disabled child can make *reasonable progress* on his goals. If you believe that your child is not making reasonable progress on his goals, you can request a meeting to amend the IEP. At the IEP meeting, the team should assess whether your child is making reasonable progress, and, if not, determine how to change the education or services to enable him to make progress. Your child does not need to meet every goal on his IEP to be considered to be making “reasonable progress.” But he must be learning and gaining skills in a meaningful way.

How are annual goals measured?

Different goals will be measured in different ways. The IEP must specify how each goal will be measured. Some goals can be measured through the use of objective tests. These might include tests that tell a student’s reading level, for example. For other goals, however, there are no standardized tests. These are often the functional goals, such as improving organization or behavior. To measure functional goals, the teacher or other staff person will usually need to record data. For example, the teacher might create a rubric or chart to keep track of how many times the student turned in homework, spoke out-of-turn, or needed to be redirected more than once. The progress will be determined by comparing the number of desired and undesired behaviors at regular intervals and seeing whether the number of undesired behaviors is going down and the number of desired behaviors is going up.

The IDEA requires schools to provide progress reports on the IEP goals as often as regular report cards are issued. If students get a report card from your school every 9 weeks, you should also get a “progress report” specifically on your child’s IEP, every 9 weeks. The progress report should be clear and specific enough for you to tell whether your child is making progress. A progress report that merely



says “progress is being made” is insufficient. The progress report should report the data, test scores, or other information that is being used to measure progress.

Are my views on my child’s progress taken into account?

Parents have the legal right to meaningfully participate in developing their child’s IEP. Therefore, the IEP team must consider what the parents have to say about their child’s strengths and weaknesses. At the IEP meeting, parents should have the chance to share what they think their child needs. If there is disagreement about what a child can and cannot do, the parent has the right to ask to see a child’s work samples or other records that show the progress of the child. Both what the parents see and what the teachers see should be included in the “Present Levels of Achievement” section of the IEP. Also, parents’ concerns with the child’s placement, progress on goals, or any other issue should be included in the “Parent Concerns” section of the IEP.

What should I do if my child comes home from school and says she is not getting a service on her IEP?

If your child says she is not getting the services outlined on the IEP, you should begin with an informal investigation by asking the child’s teacher about the services. If that doesn’t resolve the issue, you should start moving up the “chain of command.” It’s a good idea to contact the Exceptional Children’s coordinator in writing, either by sending an email or a note. The message should be that the child is not getting a certain service on her IEP and that you are concerned. Be reasonable, and give the school the opportunity to fix the problem or explain what is going on. If your child continues to not receive a certain service on her IEP, then the school might be out of compliance with the IEP. If so, you should contact the head of the Exceptional Children’s division at your school district and see if he or she can address what is happening at your school. If you still are not satisfied, you can file a state complaint with the North Carolina Department of Public Instruction (DPI). After you file a complaint, DPI will conduct an investigation. If DPI finds that the school has not complied with the IEP, then DPI will issue an order to the school to fix the problem. It can order “compensatory services,” which are services that will make up for those that were not provided according to the IEP. More information about how to file a state complaint is in the [IDEA Dispute Resolution](#) chapter of this Guide.

What should I do when the school says that it does not have enough money to give my child the services that my child needs?

The child's school (or school district) must provide each disabled child a free, appropriate public education (FAPE). Not having enough money to do this is not a valid, legal excuse to deny needed services (although it may very well be a truthful excuse due to limited funding for schools). The decisions about services provided must be based on your child's needs, not the resources the school has available. At the meeting, you should try to focus the conversation on what services your child needs to make reasonable progress. If a service is not available at your student's current school, perhaps it is available in another school. If a teacher or special education director says that a certain needed service is too expensive, you should make sure that this is documented in writing, either in the IEP team minutes or another written communication.

If the school continues to deny a service based on limited resources, the parent may wish to either file a state complaint or a due process petition. More information about how to file a state complaint or a due process petition is in the [IDEA Dispute Resolution](#) chapter of this Guide. A parent may also wish to contact the elected representatives in the N.C. General Assembly to ask for more adequate school funding.

What if the school has not hired enough trained special education teachers or aides and thus can't meet my child's needs?

The hiring process for teachers and other school personnel can be unpredictable and take longer than expected. Sometimes, the school district has done everything it can to find trained professionals, but simply cannot find anyone qualified and available for the positions. Parents may wish to voice their concerns about the lack of special educators to the principal, the superintendent, elected school board members, and members of the NC General Assembly. Parents may file either a state complaint or due process petition if the lack of staff has resulted in their child not being able to make progress. More information about how to file a state complaint or due process petition is in the [IDEA Dispute Resolution](#) chapter of this Guide.

May my child lose a part of the school day due to special transportation needs?

No. A child with a disability is entitled to the same length of school day as other children in his school. The school cannot lawfully shorten the school day for disabled children to accommodate bus or van schedules. If this has happened,

the parents should ask that it be changed and that the child be provided “compensatory education” for the school time missed. Compensatory education is additional tutoring, class time, or other services to get a child caught up to where he would have been had he not missed class due to the transportation issue.

Why are there no special education teachers that provide inclusion or pull-out services for science and social studies?

North Carolina appears to have made a policy decision to focus special education resources on math, reading, and writing. It is typical across the state to use special education teachers only for math and language arts instruction, with some exceptions for students who are not following the standard course of study. In some other states, special education teachers co-teach with science and social studies teachers in an “inclusion” setting, allowing special education students to have the benefits of being in a regular classroom and getting the special education support they need.

Nothing in the special education law directly addresses this limited role for special education teachers. The law states that students are entitled to “supplementary aids and supports” in regular classrooms if that is what is needed to allow the child to remain in the regular classroom and make progress in the general curriculum. In North Carolina, those supplemental aids and supports are classroom accommodations, modifications, and sometimes assistive technology. If you think that your child is doing very poorly in social studies and science, you should raise this issue with the IEP team and ask for special education support. A refusal of the team to put sufficient support in place can potentially be addressed through a state complaint or due process petition. More information about how to file a state complaint or due process petition is in the [IDEA Dispute Resolution](#) chapter of this Guide.

### [Least Restrictive Environment and Placement Issues](#)

What is the “Least Restrictive Environment” or “LRE”?

The least restrictive environment, or LRE, is the school environment that gives a special education child the most exposure to nondisabled children. This means that children with disabilities are educated with children who are not disabled, to the maximum extent appropriate. Children cannot be removed from the regular classroom unless they cannot learn there, or they are so disruptive that the other

children cannot learn. Before the IEP team decides to remove the child from the regular classroom, the team must consider whether the problems the child is experiencing can be addressed with additional aids and services in the regular classroom. In other words, school districts should try supporting a child in the regular classroom before moving him to a more restrictive environment.

Another way to look at the question of “least restrictive environment” is to ask, “Can the child make reasonable progress in the regular classroom, with appropriate support?” If the answer is yes, then the child should be placed in the regular classroom all day, with support provided there. If the answer is no, then the IEP team needs to determine how much time the child needs to spend outside the regular classroom, in the special education classroom (sometimes called a “resource” room), or with a service provider such as a speech-language therapist, to be able to make reasonable progress. The goal is to remove the child for as little time as possible from the regular classroom, but to assure that the child is in the setting necessary for the child to make educational progress.

Sometimes the term “least restrictive environment” is confused with the term “mainstreaming.” A child is “mainstreamed” when he is in all regular or general education classes and is not pulled out for any special education services. For many students, a mainstream setting is the least restrictive environment; the student can get all the special education support he needs in the regular classroom. For other students though, the least restrictive environment might be in a separate classroom or school. It all depends on what setting allows the child to make reasonable progress.

What does it mean for my child to be categorized as “regular,” “resource,” or “separate” on his IEP?

These are terms used as short-hand for the decision about how much time your child will be in various settings during the school day. In particular, they reflect how much time your child will spend outside of a regular classroom. Being in a “regular setting” means that your child spends most of the school day (80 percent or more) in a classroom with nondisabled peers. Being in a “resource setting” means your child spends between 40 and 79 percent of her day in a regular classroom, with the rest of her time in a special education classroom. Being in a “separate setting” means your child spends most her day (40 percent or more) in a special education classroom. Children can also be placed in separate day schools (public or private), in residential schools (public or private),

at home, or in the hospital. This range of settings is sometimes called the “continuum of placements.”

It is important to recognize the difference between “placement” and location. A “placement” refers to the type of special education setting in which a child spends his day. It is determined by how much time the child is with nondisabled children. A child’s placement does not necessarily change when the child is assigned to a different school, so long as the amount of time spent with nondisabled children remains the same as in the previous school.

Is the “resource classroom” available only to students who are below grade level? No. A “resource classroom” usually refers to a classroom in which a special education teacher is the main teacher, but that teacher teaches different groups of students during a school day. Students are “pulled out” of their regular classrooms to go to the resource classroom for special education in a particular subject. Resource classrooms are often smaller and the teacher can provide more targeted instruction to meet the unique needs of the students.

If a child who is at grade level needs a smaller or more structured class due to a disability (such as autism spectrum disorder, attention deficit hyperactivity disorder, or emotional disability), then the child should be placed in such a classroom. The question is always whether the child can make reasonable progress in a regular classroom, with supplementary supports. If the answer is no, then the team must consider other placements. If the child is working at grade level in the general curriculum, then that curriculum should be offered in a classroom setting that will allow the child to make progress. Whether it is called a resource classroom or has another name, it should be a setting that is appropriate for the student.

What is “homebound” (also called home/hospital) and when can my child be placed there?

“Homebound” and “home/hospital” are terms used to express the most restrictive of special education settings. If a child cannot function at all in a school building, regardless of the level of support provided, then the child may need to be placed in this most restrictive setting. If the child is hospitalized for an extended period of time, his IEP should be changed to reflect that the educational program must be provided at the hospital. Some hospitals have hospital schools, and the staff at the hospital school works with the home school to work out an appropriate educational program. If a child is medically fragile

and is too weak or sick to attend school, a homebound placement is often appropriate.

A placement at the child's home means that the child does not attend school in a school building, but is provided an appropriate educational program at home or in another location outside of school. This should only be used in the most extreme circumstances when there are no appropriate alternatives within any school setting. Before the IEP team considers homebound placement, the team must consider other options, such as specialized private schools or residential schools.

Typically, when a child is placed on "homebound," a special education teacher provides educational services in the child's home. These services must include actual instruction, not just worksheets. In other words, the homebound teacher must teach, not just bring work from the regular teacher to the child. The amount of education must be enough for the child to make progress on his or her IEP goals and to continue to learn what is being taught in the regular classroom. The team will decide on the number of hours per week the child needs. Homebound services should usually be in place for a limited amount of time and should be reviewed by someone on the child's IEP team at least once a month to make sure that placement is still appropriate.

Homebound services are not appropriate when the child has special needs that cannot be met by the local school district. In such a case, the IEP team is required to look outside the school district for appropriate services. Sometimes, the district will need to hire special staff or contract with special schools or services to meet a child's needs. It is not appropriate for the school district to place a child in a homebound setting because the child has behavior problems.

If a parent disagrees with the homebound placement, or believes that the student is not getting an appropriate education through the homebound services, the parent has a right to use the dispute resolution mechanisms available. These are described in more detail in the [IDEA Dispute Resolution](#) chapter of this Guide.

Can a "homebound" setting be used when my child is suspended from school? Sometimes. The "homebound" placement may be used temporarily when the special education student has been suspended from school and there is no alternative school available. The law requires that even while suspended, the

special education student must have a teacher so he can make progress on the IEP goals and learn regular classroom lessons. Also, the student should receive behavioral education designed to help the child avoid misbehaving in the future.

Before the IEP team can assign a child to a homebound placement during the period of suspension, it must determine that such a placement is the “least restrictive alternative” available. Thus, all school-based options, such as alternative schools, must be considered. Further, if the team determines that being at home is the least restrictive alternative, a designated member of the team must review the child’s placement at least monthly to determine whether a less restrictive placement is available.

If my child is put in a “homebound” setting, how many hours of instruction should he get?

The law does not specify a number of hours for a homebound setting. This is up to the IEP team. However, a child must receive enough hours of instruction to allow him to keep up with his regular classwork and to continue progressing on IEP goals. If the child cannot make reasonable progress on his IEP goals with the amount of homebound hours the school offers, or keep up with the regular classroom work, then he may be entitled to more homebound hours. However, if the homebound child needs only a limited amount of direct instruction per week to make reasonable progress on his goals and stay with his class, then a lower number of homebound hours might be appropriate. It may be appropriate for some children in a homebound setting to get some instruction on-line.

Is it legal for the principal or the IEP Team to say my child has to come home early every day?

This would almost never be lawful. A shortened day takes away school time and can hurt your child’s progress. The reduction of the school day to less than a full day is sometimes called a “modified day.” This could be appropriate for a temporary period if a child is too sick to attend school for a full day. The IEP team must determine how the child will continue to receive all the special education services identified on the IEP and will continue to have access to the lessons in the regular classroom.

Neither a “modified day” nor a homebound placement is appropriate as a response to a child’s behavior problems. A child with a disability who has difficulty following school rules requires special education to address the behavioral issues. Reducing the number of hours at school because it reduces



the child's opportunity to misbehave is not consistent with providing the child a free, appropriate public education, does not help the child learn to behave more appropriately, and discriminates against children with behavior problems by limiting their education. Rather than sending the child home from school, the IEP team should consider other options for responding to the misbehavior.

If my child's school does not have an appropriate placement for my child, can I ask to have him moved to another school in the district with an appropriate placement? Yes. If your child's current school does not have an appropriate placement or the services your child needs, then the school district should transfer your child to a school that does have an appropriate setting or services. If appropriate services are not available anywhere in your public school district, then the IEP team must look at private school options for the child (at school district expense). The school district must provide transportation to whatever setting the team selects.

### [Accommodations, Modifications, Supplementary Aids and Services, and Related Services](#)

What does the term "accommodations" refer to?

Accommodations are adjustments made to the classroom set up or testing conditions that make the material more accessible to a student with a disability. They help those students learn the same material that other students are learning, but in a way that allows them to work around their disability. For example, a student who is easily distracted due to attention-related disabilities may be allowed to sit right in front of the teacher, a very fidgety student may be allowed to have a stress ball, or a student with handwriting difficulty may be allowed to provide test answers orally rather than in writing. The goal is to "level the playing field" as much as possible so the student's disability doesn't interfere with her learning or her ability to demonstrate what she has learned.

While some accommodations are commonly provided, there is no specified list of available accommodations. The IEP team is free to brainstorm about what types of accommodations would help the student learn, and demonstrate his learning, with the least interference from the disability. Here are some of the commonly used accommodations:

- Supplemental instructional materials that provide alternatives to written materials, such as pictures, charts, audio books, videos, materials that can be handled or manipulated, etc.



- Changes to assignments that shorten them, break them up into smaller chunks, allow them to be turned in late or prepared in a different format
- Changes to tests so they are presented in a different format or allowed to be answered in a different format (such as orally, on a computer, or in the test booklet instead of on an answer sheet)
- Use of special equipment, such as a keyboard, an FM system, or other assistive technology (the team can ask for an “assistive technology evaluation,” which will require that an expert in educational technology evaluate the child’s needs and suggest appropriate devices)
- Preferential seating in the classroom (such as at the front of the classroom) and seating for tests in a separate room with fewer distractions

#### What accommodations are allowed on standardized tests?

A variety of accommodations are permitted. The goal of test accommodations is to make changes to how the test is given so that the child has the chance to show what he knows without interference from the child’s disability. Some of the most common accommodations are testing in a separate room, reading tests aloud (although only instructions can be read aloud on a reading test; the test questions and answers cannot be read aloud), allowing for extra time, administering multiple testing sessions, or allowing the student to mark answers in test booklet rather than on an answer sheet. If a student has “test accommodations,” the accommodations must be used on all district-wide tests and classroom assessments.

A full list of testing accommodations can be found on the [DPI website](#). Visit the [DPI Accountability](#) section of the website for more information about testing students with disabilities.

#### What does the term “modifications” refer to?

Modifications are changes to the content of the material to be learned. In contrast to accommodations, which change *how* a student learns, modifications change *what* a student learns. Most students should be learning the same subject matters that all children learn (included in the *NC Standard Course of Study*), but some will not be expected to learn it at the same level of depth. Thus, a “modified curriculum” is one that covers the same topics as the standard curriculum, but is often shorter and presented in a simpler way. Modified

assignments are often shorter and require less skill to accomplish. Modified tests ask students for less detail, have fewer choices, or require less mastery than regular tests.

It is important for parents to understand that if the child is provided with modifications, he will not be learning all the same material or mastering all the same skills as most other students. This limitation is very appropriate for some students with significant disabilities, but it has long-term implications. A student with a modified curriculum and modified tests will be less likely be able to pass the state standardized tests, earn a regular high school diploma, or be prepared for college.

***Extended Content Standards*** is the name given to a modified curriculum used in North Carolina for students who have very limited intellectual skills (often, those in the category of “intellectual disability”). This curriculum allows students to be exposed to the same general topics that are presented to nondisabled students, but at a much more basic level. Students whose learning is based on the *Extended Content Standards* take tests designed to assess progress on those standards. These are known as alternate assessments, described below.

**Occupational Course of Study (OCS)** is the name of a modified curriculum used in high schools as an alternative to the standard curriculum. It includes typical academic subjects such as English Language Arts, Mathematics, and Science, but at a lower academic level than the general high school curriculum. It also includes subjects that prepare students for work instead of for college and requires that students work in the community during their high school years. While students who complete the OCS curriculum will be eligible for a high school diploma, such a diploma does not indicate mastery of the standard high school curriculum and does not indicate readiness for a 4-year college.

### **What are alternate assessments?**

Alternate assessments are standardized tests that differ from the tests given to the general student population. Alternate assessments are designed to allow all children to participate in the statewide testing program and are made available to children who would be unsuccessful in the standard testing program, even with accommodations.

Students with “significant cognitive disabilities” in grades 3 through 8, 10, and 11 will be offered alternate testing known as NCEXTEND1. English Language Arts/Reading, Mathematics, and Science are tested through NCEXTEND1. At the high school level, students in the Occupational Course of Study will take the “College and Career Readiness Alternate Assessment” at Grades 10 and 11. (Note: Elementary and middle school students who are heading toward the Occupational Course of Study should take the regular End-of-Grade tests, *not* NCEXTEND1.)

If a child is being tested using NCEXTEND1 or the College and Career Readiness Alternate Assessment, it means that the child is not learning the standard grade-level curriculum and is not on a track to get a regular high school diploma. These alternate assessments should only be used when the members of the IEP team agree that the child is not intellectually capable of learning the standard curriculum, even if given good special education support.

### **Who decides if a modified curriculum such as the Occupational Course of Study or the Extended Content Standards will be used?**

This is typically a decision to be made by the child’s IEP team. The team should discuss the child’s disabilities and how those disabilities affect the child’s ability to learn. All students who can learn the Standard Course of Study – with appropriate special education support – should be on a regular curriculum, not a modified curriculum.

The final decision about participation in the Occupational Course of Study (OCS) belongs to the student and his parent. This decision should be made no later than the child’s eighth grade year. While it is possible to move from the standard course of study to the OCS, or vice versa, after the 9<sup>th</sup> grade, it is difficult and may require an additional year in high school.

More information about the Occupational Course of Study can be found on the [DPI website](#).

### **What are “supplementary aids and services”?**

Supplementary aids and services are supports that make it possible for a child with a disability to participate with non-disabled children. They can be put into place in the regular classroom, in non-academic settings, and in extracurricular activities. There is no specific list of such aids and services; they vary from child to child and setting to setting. Accommodations such as FM systems, special

keyboards, or other classroom technology fall into the category of supplementary aids and services, as do additional personnel such as an interpreter for a blind student or a behavioral aide for an autistic child.

The use of supplementary aids and services is related to the question of what is the “least restrictive environment” for a student. Before a student can be removed from the regular classroom, or restricted from engaging in non-academic programs or extra-curricular activities, the IEP team must consider what supplementary aids and services could be put in place to allow the student to be educated with non-disabled students.

### **What are “related services”?**

Related services are services that are needed for a child to “benefit from” special education. If a service is needed to ensure that a child is offered a free, appropriate public education, then it is a required related service. The law lists a number of related services, but the listed services are just examples. Among the most common related services offered in the public schools are speech and language therapy (for children with communication problems); occupational therapy (for children with handwriting difficulties); specialized transportation (for students who cannot ride the regular school bus due to their disabilities); and interpreting services (for students with vision and hearing impairments).

Other related services listed in the law as the types of services that may be needed are psychological services, counseling services, rehabilitation services, social work services, and parent counseling and training.

It’s important to distinguish between “related services” and “medical services.” Schools are not obliged to provide medical services or medical devices. For example, schools are not required to provide hearing aids or cochlear implants. They are not required to provide psychiatric or other medical treatment. They are required to provide nursing services, however, if such services are needed to allow the child to benefit from special education. One case decided by the U.S. Supreme Court said that a school was required to provide personnel who could keep a student’s tracheotomy tube properly suctioned. Services that can only be provided by a physician are not considered to be “related services” and thus schools cannot be required to provide them.

**If the school can't or won't pay for extra services for my child, like the services of a personal aide, can I provide funding so that my child gets what he needs?**

The IDEA does not address this question. Given that the law requires the special education and all related services to be free to the parent, having a parent pay is not consistent with the spirit of the law. In general, schools do not allow this because they do not want to have people working in their schools that are not employees of the school district. An outside aide would be an employee of whoever is paying her. The school would not have control over the actions of the aide paid by an outside source, so it might be reluctant to have that person in a classroom.

## IEP Meetings

**Can I get a draft of the IEP before the actual IEP meeting?**

You can request that the school send you a draft of the proposed IEP document before the meeting. Because coming up with a comprehensive IEP in a group is very time consuming, it is typical for the child's special education teacher or case manager to develop a draft that the team can consider as a starting place at the meeting. You may ask the teacher or case manager to provide a copy of the draft before the meeting so that you can review and think about it ahead of time. However, there is no legal obligation for a draft to be provided ahead of the meeting.

**How many IEP meetings can I have in a year?**

There is no upper limit on how many IEP meetings can be held in a year. There must be at least one IEP meeting each year, because an IEP expires after one year. However, the team can meet more than once a year if there is a reason to reconsider the IEP. Reasons to reconsider the IEP include:

- The child is not making reasonable progress with the current services, and the team needs to consider changes;
- The child has already met all the goals on the IEP, so new ones should be developed;
- As a result of behavioral or other changes, the IEP team needs to reconsider the child's setting (also known as "placement").

IEP meetings take a lot of time and take teachers away from their classrooms. If the problem does not require the whole team to assemble, or if it can be resolved without changing the IEP, then parents should try to work out problems

through informal conferences. Also, if the parent and the special education teacher agree, minor changes to the IEP can be made without the presence of an entire team. Parents should always be reasonable in their requests for IEP meetings.

### **Can I record my child's IEP meetings?**

The law does not address the recording of IEP meetings. Nothing prohibits a parent from recording a meeting, but the law does not specifically allow it. If you need to record the meeting to adequately understand it or participate in it, then it should be allowed. For example, recording should be allowed if a parent has limited English skills or if only one parent can attend and will share the recording with the other parent. Because the law does not discuss recording IEP meetings, if you want to record a meeting you should talk to the school district representative and come to an agreement before the meeting.

### **Can IEP meetings be limited to a certain amount of time?**

The law does not say whether IEP meetings can be limited to a certain amount of time. But the law does say that parents must be allowed to participate meaningfully in the development of the IEP. The rule of reasonableness applies here. For example, it would be unreasonable for a parent to be told that the meeting for the annual review is limited to thirty minutes, because that would not be enough time to talk about all parts of the IEP. However, it would probably be reasonable for the school to tell you at the beginning of the meeting that certain staff members had only two hours. If the team cannot finish developing the IEP in that time frame, then a follow-up IEP meeting must be scheduled.

### **How much notice of an IEP meeting should I get?**

The law requires schools to give parents "reasonable notice" of IEP meetings. The school must contact parents to tell them the time, date, and purpose of the meeting. The information may come in a document titled "Invitation to Conference." The law does not say exactly how many days before an IEP meeting that a school must contact the parent, but if the invitation comes at least ten days before the meeting, that will be considered reasonable notice. The child's teacher or case manager may contact the parent by phone to find a time that works for the parent and the other members of the IEP team. If that happens and the parent agrees to a time and date, the call is considered reasonable notice.

**What if the IEP meeting is scheduled at a time that I cannot attend?**

The law requires school districts to schedule IEP meetings at a “mutually agreed on time and place.” School personnel should make an effort to schedule the meeting when the parent is available. If you cannot attend at the time suggested by the school, you should call the school and give the IEP team some dates and times that work for you. If you cannot attend the meeting, you can ask the school district if you can participate in the meeting over the phone or through video conference. Because each IEP must be reviewed at least once a year, sometimes the meeting must proceed so that the IEP does not expire.

**May I call an IEP meeting when I think one is needed?**

If you believe an IEP meeting is needed and it is not time for the annual review, you may ask that a meeting be scheduled. The law doesn't state a time limit for the scheduling of such a meeting, but in general, it should be scheduled within a reasonable period of time. Ten school days is generally considered reasonable. Because IEP meetings take a great deal of staff time and are disruptive to teachers' schedules, you should reserve requests for IEP meetings for important issues that require changes to the IEP. IEP meetings are not the right place for getting general updates about the child's progress or voicing a complaint about things like homework assignments. For those types of issues, ask your child's teacher for a personal conference or talk by e-mail.

**Can someone else act for the parent if the parent is unable or unavailable to made education decisions?**

Yes. Under the IDEA, a child's “parent” is an adult in the child's life who can make decisions about the child's education. This can be a biological or adoptive parent, a legal guardian, a foster parent, or someone else who the child lives with and who acts in the place of a parent (such as a stepparent or a grandparent) or who is legally responsible for the child's welfare. In the absence of someone in one of those roles, a “surrogate parent” must be appointed by the child's school district to serve as the child's parent and make necessary decisions.

All school districts must have procedures to determine if a child has a parent who can represent her educational interests and, if not, to appoint a surrogate. A surrogate parent cannot have any interests that conflict with the child's interests. He must have the knowledge and skills to adequately represent the child's educational interests. Lastly, he cannot be an employee of any school or agency involved in the education of the child. The surrogate parent should be familiar

with the child and his special education needs. The person appointed as surrogate parent has all of the same rights and responsibilities a typical “parent” under the IDEA.

A few situations raise difficult questions. Because of the potential for conflicts of interest, the Department of Social Services (DSS) cannot function as a parent or surrogate parent, even if DSS has legal custody of the child. Thus, someone else must function as the parent. If the child is in the physical custody of a foster parent, and that person is willing to serve, the foster parent may be a good choice. While the child’s guardian *ad litem* (GAL) might also be a good choice, GALs in North Carolina are discouraged (by the GAL program) from serving in this capacity.

A therapeutic foster parent – a person employed to provide a therapeutic home environment for a child experiencing behavioral or emotional challenges – is not eligible to be a surrogate parent. However, the child’s actual parent typically retains legal custody when a child is in a therapeutic foster home, and thus can continue to be involved in the IEP process.

### **What happens when my child turns 18?**

When your child turns 18, the legal control over his education transfers to him. At 18, a student has the right to make his own educational decisions and is given all the rights that parents have had in the IEP process. You may attend the IEP meetings and advocate for your child, so long as he consents. But the ultimate decisions are for the student to make.

Some students with very significant disabilities may be unable to manage making their own educational decisions. In those cases, parents may wish to pursue legal guardianship of the child. This is a legal process handled by the Estates Division at the county courthouse. To become the guardian of a person 18 years of age or older, the person must be shown to be unable to make important decisions. If a parent believes a guardianship will be necessary, she should begin the court process before the child turns 18.



## School Discipline

### **If my child has an IEP, can she still be suspended?**

Yes. Children with disabilities can be suspended for up to 10 days in a school year without any special protections. After that, some protections are in place to protect children with disabilities. The guiding principle is that children with disabilities should not be suspended for behaviors caused by their disability. However, if the misconduct is not caused by the child's disability, the child can be suspended the same as a non-disabled child. Even if the child is suspended, though, his school district must still make sure that he receives a free, appropriate public education (FAPE) while suspended.

### **What happens if my special education child is recommended for a suspension of more than ten days?**

First, parents should get a written notice of what happened that led to the suspension and what length of suspension is being recommended by the principal. Parents may wish to schedule a personal meeting with the principal or assistant principal to discuss why a suspension is being recommended. (Principals may impose suspensions of 10 days or less. They may recommend longer suspensions to the Superintendent but only a Superintendent may impose a suspension of 11 days or longer.)

Then, the school should schedule a Manifestation Determination Review (MDR), which is described below. The purpose of the MDR is to decide whether a student's misconduct was a symptom (or manifestation) of the disability. This meeting must occur within 10 school days of the suspension. The student will be suspended during this 10-day period.

Following the MDR, the student will be able to return to school if the team finds the misconduct was a manifestation of the disability. However, if the team did not make that finding, the suspension will still be in place.

All students have the right to appeal a long-term suspension and have a hearing. The issues at an appeal are different from the ones at an MDR. At a school suspension appeal, the issues are whether the student did what he was accused of doing, and whether the length of the suspension is proper. Each school district has slightly different procedures for the appeal hearings; the procedures can be

found either in the School Board Policies on the school district's website, or in the Student Handbook.

### **What is a "Manifestation Determination Review" or "MDR"?**

A "Manifestation Determination Review" (MDR) is a special type of meeting that the IEP team must hold if the student is facing suspension of more than 10 days in a school year. The purpose of this meeting is to determine if the behavior that led to the suspension is a "manifestation" (or symptom) of the student's disability. If it is, the student may not be suspended for the conduct.

At the MDR, the IEP team (which includes the parents) must address two questions: First, was the conduct that led to the suspension caused by or substantially related to the child's disability? Second, did the conduct arise because the child's IEP was not being implemented? If the answer to either question is yes, then the conduct is determined to be a "manifestation," and the student may not be suspended for it.

In making the decision about whether the conduct is a manifestation, the team should review the student's evaluations, IEPs, discipline history, any behavior plans, other information available about the nature of the student's disability, and the reasons he was declared "disabled" in the first place. If the student was determined to be disabled because of consistent behavior problems, and the behavior that led to the suspension is similar to the behavior that resulted in him having an IEP, then the behavior likely should be found to be a manifestation of the disability. On the other hand, if the student's disability does not relate to behavior and the student has never violated school rules before, it is not likely to be considered to be a manifestation.

### **What happens if my child's conduct is found to be a "manifestation of his disability" at an MDR?**

If the IEP team finds that the student's behavior was a manifestation of his disability, the student should go back to school. The team should consider changes to the student's IEP that will help the child avoid misconduct in the future. The IEP team should consider having a "Functional Behavioral Assessment" done and/or implementing a "Behavior Intervention Plan." These are described below.

There are three exceptions to the rule that the child must return to school if his behavior is a manifestation of his disability. A school can suspend a student with

disabilities for up to 45 school days, even if the student's action was a manifestation of the disability if:

- The student had a weapon at school or at a school function;
- The student had illegal drugs at school or at a school function; or
- The student seriously injured another person at school or at a school function.

However, even if one of these conditions exists, and the student cannot return to school, the student is still entitled to education, just in a setting other than his regular school (either in an alternative learning program or setting or at his home). At the end of the 45 days, the student should be returned to his original school placement unless his placement is changed by the IEP team at an IEP meeting.

### **What happens if my child's conduct is found not to be a "manifestation" of his disability?**

If the misconduct was neither substantially related to the student's disability, nor the result of the school's failure to follow his IEP, then the student can be suspended. If the parent disagrees with the decision of the team that the conduct was not a manifestation, the parent can use one of the dispute resolution tools. Specifically, a parent could ask for a mediation or could file for a due process hearing. (These are described in the [IDEA Dispute Resolution](#) chapter in this Guide.) In due process cases involving MDR decisions, the judge in the case is required to speed up the usual process so that a decision can be reached quickly.

If the suspension is for longer than ten days, the underlying suspension itself may be appealed through a process set up by the school district. A suspension appeal is appropriate if the student denies that he did what he is accused of doing or believes the suspension is too long. Suspension appeals are handled by the school administration according to procedures spelled out in the student handbook.

Even if the student's suspension is upheld, the school district must continue to provide education to the student so that he can continue making progress on his IEP goals. This can occur in any setting other than the child's regular school.

There are no precise rules on what this education must consist of, other than allowing the student to continue to participate in the general curriculum and make progress on his IEP goals.

### **What is a “functional behavioral assessment” or “FBA”?**

A functional behavioral assessment (FBA) is a method of looking at behavior to understand why the child behaves the way she does and how the world around the child affects the child and the behaviors. “Best practice” with regard to an FBA is to have it done by a trained observer, not the student’s teacher. An excellent website regarding FBAs is available from the [American Institutes for Research](#).

Steps included in a Functional Behavioral Assessment include identifying the problem behaviors, collecting data about the behavior, identifying the function of the behavior, and developing a theory that explains why and when the child misbehaves. From the data, a good Behavioral Intervention Plan (BIP) can be developed. For more information on what a good BIP has, see related question in this section of [Frequently Asked Questions](#).

### **When should a functional behavioral assessment be conducted?**

A functional behavioral assessment must be conducted following a Manifestation Determination Review when the team has concluded that the misbehavior was a “manifestation of the disability.” If an FBA had been done previously and a Behavior Intervention Plan (BIP) is already in place, then the team can revise the Behavior Intervention Plan (BIP) rather than complete a new FBA.

If the behavior leading to a suspension is found not to be a “manifestation,” the IEP team should determine if conducting an FBA would be appropriate under the circumstances. The goal is to put a plan in place that will help the student avoid future misconduct.

### **What is a “behavioral intervention plan” or “BIP” and when should it be used?**

A Behavioral Intervention Plan (BIP) is a plan that is developed from the results of the Functional Behavioral Assessment. It is primarily a plan for the teacher and other adults to help them adjust the surroundings and their reactions to a child’s misbehavior. The idea is that if the situations and triggers that result in misbehavior are changed, then the misbehaviors will be reduced. Similarly, if the reactions of the adults are controlled so as not to escalate the behaviors, the individual incidents of misbehavior become less disruptive. Often, a BIP will

include positive supports such as direct instruction about replacement behaviors, rewards for desirable behavior, and the selection of a caring adult to provide positive support during difficult times. The plan may also include changes to the environment to keep the behaviors from starting in the first place. Consequences for repeated behavior can be included in the plan, but they are not the main goal. The plan should also specifically identify who is responsible for which parts of the plan. A good resource for BIPs can be found from the [American Institutes for Research](#).

### **What should I do if my child is repeatedly getting sent home early?**

Under the IDEA, being sent home early in response to misbehavior is called a “disciplinary removal.” You should keep records of the amount of time the child is being removed from school. Under the law, a child with a disability may not be removed from school for more than a total of ten days in a school year without getting the benefit of the IDEA protections. These protections include having the team meet for a Manifestation Determination Review (MDR) to look at whether the misbehavior is a “manifestation” of the child’s disability. If it is, then the removals must end. The parent can insist that a MDR be held for each removal after the total amount of time removed from school reaches the equivalent of 10 school days. If the school refuses to hold the MDR meetings and continues with the early dismissals, the parent should consider filing a complaint to the state Department of Public Instruction, Exceptional Children Division. This type of removal from school is unlawful. (For more information on Manifestation Determination Reviews, see related question “What is a ‘Manifestation Determination Review?’”) For information on filing a state complaint, see the [IDEA Dispute Resolution](#) chapter of this Guide.

### **Can my child be charged with a criminal offense for something he does at school?**

Yes, if the conduct violated the law. Nothing in the IDEA protects a disabled child from being charged with a juvenile offense or a criminal offense.

Under North Carolina law, a principal must inform law enforcement when one of the following nine incidents happens at school:

- Assault resulting in serious personal injury;
- Sexual assault;
- Sexual offense;
- Rape;

- Kidnapping;
- Indecent liberties with a minor;
- Assault involving the use of a weapon;
- Possession of a weapon; or
- Possession of a controlled substance in violation of the law.

For other offenses not listed above, the principal or school resource officer can decide whether to report the incident to law enforcement.

## PART IV

### CHAPTER 10 • Sample Letters to Schools

#### Introduction

Letter writing is an important tool for communicating with your child's school. Unlike other forms of communication, such as face-to-face conversations or telephone calls, a letter will provide evidence of what was communicated. There will be little question about what you say if it is in writing. Sometimes, written communication is required, as in a request for evaluation.

This section includes samples of letters that you might use as you are advocating for your child. All of your letters should have a date, and you should always keep a copy for yourself. Using e-mail is also a good way to communicate, as long as you keep the e-mails relatively short and business-like.

#### Letter Requesting an Evaluation: Parent Referral

*From the date on the letter, the district has 90 days to complete the evaluation, have an "eligibility meeting" to determine whether your child qualifies for special education, and develop an IEP if the child is eligible.*

The purpose of this letter is to notify the school district of your belief that your child may need special education services to make adequate progress in school. This letter, called a "parent referral," is a request that the school district evaluate your child to determine if he or she should be receiving special education. When the district gets this letter, a special education administrator will typically schedule a meeting with you and teachers to discuss what the concerns are, determine what type of testing is

appropriate, and get your written consent for the testing. From the date on the letter, the district has 90 days to complete the evaluation, have an "eligibility meeting" to determine whether your child qualifies for special education, and develop an IEP if the child is eligible.

#### **When you should submit a parent referral**

You should submit a parent referral if you feel your child needs some kind of specially-designed instruction to make progress. This might be because:

- Your child seems well behind his peers in learning and you suspect there may be a disability getting in the way; or
- Your child has received a medical or mental health diagnosis of a condition, such as autism, attention deficit hyperactivity disorder, hearing loss, or emotional problems, which seems to be affecting learning or slowing down her school progress.

A parent referral must be in writing. If you feel you cannot write an effective letter, you can ask for an evaluation orally and someone at the school

***All of your letters should have a date, and you should always keep a copy for yourself.***

should help you to put the request in writing. The 90-day time limit does not start until the request is in writing, with a date on it. You can hand-deliver the letter, put it in the mail, fax it, or send it by e-mail. Always keep a copy for yourself, and follow up to make sure your letter was received.

If you use the sample here, be sure to make it personal. You need to remove the brackets and add the personal information there.

### **Sample Parent Referral Letter**

[Date]

[Principal's Name], Principal  
[School's Name and Address]

RE: [Child's Name, Date of Birth, School, and Grade]

Dear Mr/s. [Principal's Name]:

I am referring my [son/daughter], [child's name], for evaluation under the Individuals with Disabilities Education Act to determine [his/her] eligibility for special education services.

[Child's name] is in the [child's grade] at your school. [Child's name's] teacher is [Teacher's name]. I am worried because my child is struggling in school and may need additional services to learn. In particular, [Add details here about how your child is struggling and other information that suggests he or she may need special education to succeed].



As provided in the Individuals with Disabilities Education Act, I would like to be an active participant in the team that decides the components of the comprehensive evaluation. Please let me know when this team will be meeting.

Please consider my signature below as my consent for any testing that will be a part of the evaluation. If there is any additional paperwork that needs to be completed, please send it to me and I will complete it promptly.

Thank you for your assistance. I hope that an evaluation can be completed without delay. If you have any questions, please contact me at [*your phone number/email address*].

Sincerely,

[*Your name*]

### Letter Requesting Records

You are entitled to review your child's educational records upon request. While the law does not require that the school district make copies available to parents, most school districts will provide copies upon request. A school district may instead simply give parents the option to see and inspect the records. If copies are provided, the school may charge a reasonable copying fee, although most do not ask parents to pay for copies. If charging a fee would effectively prevent a parent from having access to their child's records, the district must waive the fee.

Typically, schools maintain two sets of records for children who receive special education services:

- One set of records includes the records kept for all school children, which includes the child's grades and test scores, immunization records, discipline records, attendance records, and miscellaneous other records. This set of records is often called a child's "*cumulative file*."
- The other set of records is the "special education file." This set includes evaluation results, IEPs, IEP meeting minutes, IEP progress reports, and other matters related to the child's special education services. These records may also be called the child's "*confidential file*."

Parents have the right to review both sets of records.

Upon request, the records should be provided to the parent within a reasonable period of time, which may not exceed 45 days from the date of the request. If a parent needs the records to effectively participate in an upcoming IEP meeting, the records must be provided to the parent before the meeting (in less than 45 days).

You can hand-deliver your request, put it in the mail, fax it, or send it by e-mail. Always make sure it is dated, keep a copy for yourself, and follow up to make sure your letter was received.

If you use the sample below, remove the brackets and fill in the personal information indicated.

### **Sample Letter Requesting Records**

[Date]

[Principal's Name], Principal

[School's Name and Address]

RE: [Child's Name, Date of Birth, School, and Grade]

Dear Mr/s. [Principal's Name]:

I am writing to request a copy of my [son/daughter]'s, [child's name]'s, education records. This request includes all of the records in the school district's possession, including my child's cumulative file and special education records.\* I make this request pursuant to the Family Educational Records and Privacy Act (FERPA), 34 C.F.R. Part 9.

[CHOOSE ONE:] Please let me know when the records are ready for pick up. [OR] Please mail the records to me. My mailing address is [home mailing address].

If you have any questions, please contact me at [phone number and/or e-mail address]. Thank you for your assistance.

Sincerely, [Your name]

*\*Change this depending on what you want. If you only want recent records, you can specify a date range.*

### Letter Requesting an Independent Educational Evaluation

Parents have the right to have their child evaluated by an independent professional, at school district expense, in certain circumstances. An “independent educational evaluation” (IEE) is one that is conducted by a qualified examiner who is not employed by the school district. In general, in order to get the school district to cover the expense of an independent evaluation, the following must have occurred:

- The school district conducted a special education evaluation of the child;
- The parent has reviewed the school district’s evaluation and “disagrees” with the evaluation;
- The parent requested an independent evaluation;
- The person proposed to conduct the independent evaluation is qualified and meets other reasonable criteria set by the district.

A parent might “disagree” with the school district’s evaluation if the parent believes that the test results obtained, or the examiner’s interpretation of those results, are inaccurate or do not correctly reflect their child’s educational strengths and weaknesses. A parent might believe that the school district’s evaluation was inappropriate or incomplete, or otherwise failed to provide the information needed to effectively determine either the child’s eligibility for special education or the child’s educational needs. Evaluations are discussed more fully in the chapter on [Understanding Evaluations and Educational Testing](#).

Upon receipt of a request for an independent educational evaluation (IEE), the district must respond without “unreasonable delay.” This time period is not further defined. It must either contest the request or agree to fund the IEE. To contest funding the IEE, the school district must request a due process hearing to show that its own evaluation was appropriate. Due process hearings are described more fully in the [IDEA Dispute Resolution](#) section of this Guide.

The following sample is a request for an IEE. You can hand-deliver your request, put it in the mail, fax it, or send it by e-mail. Always make sure it is dated, keep a copy for yourself, and follow up to make sure your letter was received.

Parents are not required to explain the nature of their disagreement with the school’s evaluation, but may do so if they choose. This sample assumes you know who you would like to perform the independent evaluation. If you do not have someone selected, remove that section of the letter. You may instead request that the district

provide you the names and contact information of qualified professionals in the local area that can conduct an independent evaluation. The district is required to keep a list of qualified professionals.

If you use the sample below, remove the brackets and fill in the indicated personal information.

### **Sample IEE Request Letter**

[Date]

[Principal's Name], Principal  
[School's Name and Address]

RE: [Child's Name, Date of Birth, School, and Grade]

Dear Mr/s. [Principal's Name]:

My [son/daughter], [child's name], was recently evaluated for special education services. I do not agree with the evaluation and believe that the evaluation is [incorrect and/or inadequate]. I would like an Independent Educational Evaluation, at school district expense, to be done for my child, pursuant to Section 1504-1.3 of the [NC Policies Governing Services for Children with Disabilities](#).

I would like for [name of qualified examiner] to conduct the independent evaluation. [Name of proposed examiner]'s contact information is as follows: [provide address, phone number and other available contact information].

Please confirm receipt of this request and let me know of any steps I should take before scheduling the IEE. I understand that the IEE must be paid for by the school district unless the district files for a due process hearing and obtains a ruling that the district's evaluation was appropriate.

Thank you for your assistance. If you have any questions, please contact me at [your phone number and/or e-mail address].

Sincerely, [Your name]

## PART V

### CHAPTER 11 • Section 504

#### Introduction

Section 504 is part of a federal law that prohibits discrimination against people with disabilities. It applies to programs, including public schools that receive federal funds. Students covered by Section 504 have the right to participate fully in public school programming and have their educational needs met as adequately as the needs of non-disabled students are met.

Children who are covered by this law are often provided with a “504 Plan” to outline the modifications, accommodations, and specialized services that will help them learn and participate in school activities, whether during the regular school day or during extracurricular activities.

*If a child is covered by the IDEA and Section 504, the child will generally have an IEP and not a 504 plan. The IEP can provide everything a 504 Plan can provide, and more.*

Section 504 and the IDEA overlap with each other in several respects. Both laws guarantee students with disabilities a “free appropriate public education” (FAPE). In general, the IDEA is more specific and more narrowly targeted toward students who have disabilities that harm their educational performance. The IDEA also has more specific procedures that must be followed. In

contrast, Section 504 takes a broader view of disability and applies to students whether or not their disability affects educational performance. Section 504 has fewer procedural protections. If a child is covered by both laws, the child will generally have an IEP and not a 504 plan. The IEP can provide everything a 504 Plan can provide, and more. If a student with disabilities needs accommodations only, but not any specialized instruction in the classroom, a 504 Plan may be the more appropriate protection.

#### Section 504 Eligibility

To be eligible for protection by Section 504, the child must have a physical or mental impairment that substantially limits one or more major life activity.

### Physical or Mental Impairment

Physical and mental impairments are defined broadly under the law. They can be present from birth or result from an illness or injury. They can be visible or not obvious. Examples of physical impairments that might affect a child at school are conditions that prevent the child from walking or using his hands effectively; breathing problems like asthma; limitations on the ability to see or hear; or conditions that cause pain. Examples of mental impairments that might affect a child at school are anxiety, attention deficit hyperactivity disorder (ADHD), autism, dyslexia, oppositional defiant disorder, and depression.

### Substantial Limitation

A substantial limitation is one that has a significant effect on a person's life. It is not enough if the impact is minimal or short-term. While the law does not specifically say how long an impairment must last to be a substantial limitation, the general rule of thumb is that the impairment must last for at least six months. Thus, an illness or injury, even if very severe, would not fall into the category of a disability if the child is expected to fully recover within six months. At the same time, the impact of the impairment need not be present at all times to qualify. Chronic conditions that have flare ups, like sickle cell anemia, or that appear every so often, like epilepsy, can impose substantial limitations.

The impact on the child should be considered in light of what other children of the child's age can do. If the child's ability to engage in activities is significantly weaker than the abilities of most children her age as a result of an impairment, then the child is substantially limited. When determining whether a disability exists, the school may not take into account the impact of medication, technology (such as a hearing aid), or equipment (such as a wheelchair). These "mitigating measures" may affect what accommodations the child needs, but not whether or not he is disabled. (The only exception to this is for eyeglasses; a child whose visual impairment is corrected with glasses is not disabled.)

### Major Life Activities

Major life activities include, but are not limited to: caring for oneself, seeing, hearing, eating, standing, walking, using one's hands, speaking, breathing, learning, reading, thinking and working. Major life activities include all major bodily functions as well (i.e., correct functioning of the kidneys, heart, liver, blood

system, etc.). Conditions like severe allergies, HIV/AIDS, behaviors disorders, heart problems, cancer, and many other conditions can interfere with major life activities.

### Differences in eligibility between Section 504 and the IDEA

A child may be covered by Section 504 even if she is not eligible for an IEP. While the IDEA only protects children whose disability affects their learning, Section 504 has broader coverage. Under Section 504, a child is protected as long as the condition causes a substantial limitation of a major life activity. A child does not have to struggle with academics or get poor grades to be eligible for a Section 504 plan. The disability might instead affect the child's ability to get around the building, participate in physical education or other programs, or ride the school bus.

*Usually, 504 plans are preferred when the student needs accommodations, such as extra time on tests, a seat at the front of the room, an elevator pass, or extra classroom breaks, but does not need any specialized instruction.*

Children can be protected by both Section 504 and the IDEA. When a child is covered by both laws, the child will usually have an IEP rather than a 504 plan; the IEP can include the accommodations and modifications that a 504 plan would include, plus the special education needed. Usually, 504 plans are reserved for children who need some accommodations and modifications for their disability in a general education classroom, but do not need the kind of specialized instruction required by the IDEA.

Another major difference between the IDEA and Section 504 is that a child cannot "age out" of 504 protections. Under the IDEA, individuals lose their rights to special education once they turn 22 or graduate from high school. Section 504 protects against disability discrimination for life. Therefore, if a child later goes to college, he may be entitled to some accommodations there. A college is not required to implement the exact 504 plan developed during the child's earlier education, but it must develop a plan that allows access to the college environment and protects the student from discrimination on the basis of the disability.

## Steps to getting a Section 504 Plan

### Referral

Public schools have a duty to evaluate children under Section 504 when the school suspects that the child is disabled and may be in need of accommodations. The process usually begins when a parent or school staff member suspects that a child may need Section 504 protection and requests an evaluation. A request from a physician or other professional working with the child could also trigger an evaluation. If a child is denied eligibility for an IEP, parents might wish to refer for a Section 504 evaluation.

*Even after receiving a request, a school can decide not to evaluate a child if there is no reasonable basis to suspect the child has a disability. If a school chooses not to evaluate a child, it must inform the parents in writing of its decision not to evaluate.*

The school is not required to evaluate a child upon a request. Even after receiving a request, a school can decide not to evaluate a child if there is no reasonable basis to suspect the child has a disability. If a school chooses not to evaluate a child, it must inform the parents in writing of its decision not to evaluate. The school must also inform the parents in writing of their rights and options to challenge the school's

decision.

The school must get consent from the parent before starting the 504 evaluation process. If a parent does not consent, the school can try to override the parent's decision by going through a "due process" case. In a due process case, an impartial judge decides whether the school has the right to evaluate the child without the parent's consent.

The referral and evaluation process is typically coordinated by the school district's "Section 504 Coordinator." Questions about the 504 process can be directed to that person, whose identity can usually be found on the district's website.

Unlike under the IDEA, a request for an evaluation does not have to be in writing. Even so, it is a good idea to document as much of the process as possible. Putting things in writing can help avoid misunderstanding between parents and schools.



Putting things in writing can also help parents if they later decide to challenge the decision and process.

### Evaluation

The evaluation process under Section 504 can be less formal and structured than under the IDEA. While often the school psychologist will do some formal testing, a 504 evaluation can include more informal sources, such as health and medical records, grades, standardized test scores, teacher observations, discipline records, and other data determined to be relevant. The decision cannot be made based on a single piece of data.

Any required assessments, including a medical assessment, must be paid for by the school district. If the school does not require a medical assessment, a parent is still free to offer one that the parent obtained privately. The private assessment must be considered by the team, but the team can choose not to accept its conclusions.

The decision about whether a child is covered by Section 504 is made by a group of persons knowledgeable about the child, the meaning of evaluation data, school facilities, and the placement options. Often called a “Section 504 Team,” the group’s makeup is not specified by the law. Parents are not required to be part of the Section 504 team, although many schools invite them to participate. A parent can ask to be a part of the team, but there is no remedy if the request is denied.

### Timeframe of Evaluation

Unlike the IDEA, Section 504 does not set a specific deadline for completing the evaluation. Instead, the school must complete the evaluation within a “reasonable time.” Nevertheless, the Office of Civil Rights (the federal agency responsible for enforcing Section 504) says

*An evaluation for Section 504 must be completed within a reasonable time. An evaluation completed within 90 days of the request will likely be considered to be timely.*

that a reasonable time is the same as the timeline used for IEP evaluations. In North Carolina, a school district has 90 days from the date of referral to complete an evaluation under the IDEA. Therefore, as long as a 504 evaluation is completed

within roughly 90 days from the date of referral, the evaluation will probably be considered done within a reasonable time.

### Reevaluation

Section 504 requires school districts to conduct reevaluation before a child experiences a “significant change in placement.” A significant change in placement happens when:

- A student is suspended for more than 10 consecutive school days;
- A student is disciplined through a series of short-term suspensions (each 10 days or less) but the short-term suspensions together add up to more than 10 school days and there is a pattern of removal;
- A student is transferred from one type of educational program to another (such as when a student is switched from a general education classroom to a self-contained classroom);
- A service that was originally provided to a student under Section 504 is either terminated or significantly reduced.

As part of this reevaluation, a 504 team will determine whether the student’s current 504 plan is adequate. The team will determine whether some services are still required and whether new accommodations are needed.

Even if there is no significant change in placement, Section 504 requires schools to reevaluate a child’s 504 eligibility “periodically.” The law is silent on exactly how often this reevaluation needs to happen, but this requirement is usually met if the school reevaluates the student approximately every three years.

### The 504 Plan

If a Section 504 team finds that a child has a disability, then school personnel should develop a 504 plan. While the law does not require a 504 Plan to be written, it usually is. A 504 plan should assure that a child with a disability can fully access the school and its programs, and is not excluded or disadvantaged because of the student’s disability.

Like the IDEA, Section 504 requires that children be educated in the least restrictive environment. This means that children with a disability should be educated with non-disabled children to the maximum extent possible. A child with a disability should be educated in a regular education classroom unless the child cannot learn in a regular classroom with the use of reasonable accommodations or modifications.

To allow children with disabilities to have full access to the school environment, schools must provide modifications or accommodations. A school is required by law to provide

*A school must provide “reasonable accommodations” to a disabled child. Reasonable accommodations are changes to the program or the building that will reduce the impact of the disability on the child’s school day.*

“reasonable accommodations.” Reasonable accommodations are changes to the program or the building that will reduce the impact of the disability on the child’s school day. Accommodations are not considered reasonable if they are excessively expensive, fundamentally change the educational program, or expose other individuals to excessive risk. Schools can choose a less expensive accommodation so long as it gives a student with a

disability an equal opportunity to participate. For instance, schools may have to provide a child in a wheelchair with ramps or move the child’s classes to the first floor of a school. However, they would not be required to build an elevator just for that child when there are less expensive options. What counts as a reasonable accommodation will vary from case to case.

### Typical accommodations for common impairments

While accommodations should be individualized, following is a list of common impairments with suggested accommodations for a 504 plan. These lists do not include all of the possible accommodations and not all of the listed accommodations will be available or appropriate in every circumstance. Also, many of the accommodations listed under one impairment (such as allowing a friend to share notes) can be used to accommodate other impairments.

#### ADHD (Attention Deficit Hyperactivity Disorder)

- Extra breaks throughout the day, including movement breaks
- Extra time on assignments, tests, and quizzes
- Separate settings for tests
- Special seating to avoid distractions
- Access to fidget devices

#### Autism Spectrum Disorder

- Behavior charts and reward systems
- Computer use to help with handwriting

- Extra time on assignments, tests, and quizzes
- Picture schedules to smooth transitions
- Access to communication technologies

#### Dyslexia and Other Reading Disabilities

- Access to audiobooks
- Extra time on assignments, tests, and quizzes
- Large-print texts
- Pictures of directions and schedules
- Simplified written directions for activities
- Small group teaching
- Shorter assignments
- Read-aloud for tests and assignments (not permitted for reading tests)

#### Hearing Impairment

- Buddy system for class notes
- FM device (which amplifies the teacher's voice in headphones)
- Seating near the front of the class
- Repeated verbal instructions
- Use of visual supplements
- Written (as opposed to oral) instructions for activities
- Sign language interpreter

#### Mobility Impairment

- Access to an elevator if one is available
- Designated friend or staff to help student carry books
- Installation of ramps
- Scheduling classes on the first floor
- Use of a wheelchair in school
- Modification of physical education requirements

### ODD (Oppositional Defiant Disorder)

- Access to “calm down” space
- Reward and behavioral reinforcement systems
- Written schedule; clear statement of expectations
- Access to preferred staff for support

### Visual Impairments

- Allowing use of a magnifying glass or other enlargement technology
- Audio textbooks, large print textbooks, or textbooks in braille
- Read aloud for assignments and tests
- Seating near the front of class
- Oral answers to assignments and tests

### Writing Disability

- Extra time on assignments, tests and quizzes
- Modified paper with special gridlines
- Teacher or peer notes
- Use of a computer to type notes and assignments
- Oral answers to assignments and tests

### Extracurricular Activities

School districts must provide reasonable accommodations to allow children with disabilities to participate in sports or other extracurricular activities. For instance, a child that has a hearing impairment should still be allowed to run on the track team even though the child cannot hear the starting pistol at the beginning of races. To accommodate the child, a school district may need to provide a visual starting cue at races.

School districts are not required to modify an extracurricular activity if the modification would alter an essential aspect of the activity or game. School districts also do not have to modify an activity if it would give the player with a disability an unfair advantage over others. For instance, a school does not have to allow a disabled child to start a track race a few seconds before the non-disabled peers. Similarly, a school district does not have

to change its policies to allow a fragile child in a wheelchair to play football since running and tackling are key aspects of the game.

## Challenging the School's Decision

Parents sometimes disagree with a school's decision. This can happen at each step of the process. For instance, a parent may disagree with a school's decision not to evaluate their child. A parent might also disagree with the 504 team's eligibility decision or disagree with the provided accommodations. In these cases, a parent can challenge the school's decision through four main avenues: a school district's 504 Grievance Process,

*If a parent chooses to challenge the decision, the school may not retaliate in any way, such as by cutting existing services to the child.*

an OCR complaint, an administrative due process petition, or a civil lawsuit in federal court. If a parent chooses to challenge the decision, the school may not retaliate in any way, such as cutting existing services to the child. Parents may wish to consult an attorney to obtain more information about which process is the best, depending on the nature of the complaint.

**School district grievance process:** School districts are required by law to set up a grievance procedure to allow parents to have their 504 complaints heard quickly at the local level. The school district must identify a person who coordinates the process. Usually, the name and contact information for the "Section 504 Coordinator" is on the school district's website, together with the local requirements. Parents should take care to adhere to all of the time limits stated in the district's grievance procedure. Typically, a parent makes a written complaint and may have the opportunity for an informal hearing.

**Complaint to the Office of Civil Rights:** Parents may file a discrimination complaint with the United States Department of Education's Office of Civil Rights (OCR), the entity that is charged with enforcing Section 504. When OCR receives a complaint, it will investigate the situation to determine whether the federal law has been violated. If it finds a violation, it will attempt to resolve the dispute. OCR does not look beyond whether the procedural aspects of Section 504 have been followed; it will not make a decision about whether a particular educational decision was correct. It will not decide whether a certain accommodation is needed or if a child's 504 plan is appropriate.

Complaints filed with OCR must generally be submitted within 180 days of the “discriminatory event” that the parent is complaining about. The OCR discrimination complaint form can be found at <https://ed.gov/about/offices/list/ocr/complaintintro.html>. A complaint can also be filed over the phone by calling OCR’s D.C. Office at (202) 453-6020.

**Due process petition:** A complaint about eligibility for a 504 plan or about the services provided through a plan can be brought through a due process petition. This is the same process used to resolve disputes under the IDEA. A due process proceeding allows parents to have their case heard before an impartial hearing officer (in North Carolina, this is an Administrative Law Judge at the North Carolina Office of Administrative Hearings.) Following the due process proceeding, the parent may further appeal the decision to a federal district court. Chapter 7 of this guide (entitled IDEA dispute resolution) provides more information on due process proceedings.

**Federal lawsuit:** Parents may sue for monetary damages in federal district court to address violations of Section 504. This is a complex process that requires the services of an attorney.

## Bullying and harassment

Section 504 imposes a duty on schools to ensure that disabled children are educated in a non-hostile environment. Unfortunately, disabled children often suffer from bullying and harassment from other students. If schools know, or reasonably should know, of disability-based harassment, then schools must take steps to try and end the harassment, prevent it from occurring again, and possibly remedy the effects of the harassment. A school cannot allow peer harassment to create a hostile environment for a student with a disability. If the school allows harassment against a disabled child to continue, it may be in violation of Section 504. All school districts have bullying policies that require the student or the student’s parents to tell school officials of the bullying. This puts the school on notice, and school officials are required to investigate and try to resolve the situation.

## Other resources

<https://www2.ed.gov/about/offices/list/ocr/504faq.html?exp>

<https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>

<https://www2.ed.gov/about/offices/list/ocr/504faq.html?exp#safeguards>

## Glossary and Acronyms

**ALJ:** Administrative Law Judge. In North Carolina, an ALJ with the Office of Administrative Hearings (OAH) presides over due process petitions brought pursuant to the IDEA.

**APE:** Adaptive Physical Education. APE is specially-designed physical education. It is used for students whose disabilities make it difficult for them to participate fully with typical children in gym class.

**AT:** Assistive Technology. Assistive technology includes equipment that is used to help a child with a disability function more effectively. Communication devices, FM systems, specially-designed keyboards, Braille readers, adjustable chairs, and audio books are just a few examples of AT.

**BIP:** Behavior Intervention Plan. A BIP is a plan designed by an IEP team to help a specific child make positive changes in his or her behavior. It should include support strategies and changes in the school environment that allow the child to develop new behavioral skills. A BIP should guide the teachers and others about how to intervene with a child in a way that will decrease behaviors negatively impacting the child's education. A BIP should be based on information gathered through a "Functional Behavioral Assessment" (FBA).

**Child Find:** Child Find is the name given to the policies and procedures designed to make sure that children who need special education are identified and evaluated. All school districts are required to develop Child Find activities. The activities must ensure that children with disabilities, beginning at age 3, are identified; including homeless children, migrant children, foster children, wards of the state, and students who are enrolled in charter or private schools.

**DEC:** Division of Exceptional Children. This is the division, within the NC Department of Public Instruction, that administers special education at the state level. It determines state policy and provides support to local school districts and charter schools as they develop their programs of special education. Under the law, it is also known as the



State Educational Agency (SEA), which is given the responsibility to ensure that the IDEA is being enforced within the state.

**DPI:** The NC Department of Public Instruction. This is the state's department of education. It has the authority to administer public school programs in North Carolina and enforce both federal and state education laws. It manages both state and federal education spending. It answers to both the State Board of Education and the NC General Assembly. It is headed by the Superintendent of Public Schools, who is an elected officer.

**EC:** Exceptional Children. This phrase generally refers to children covered by the IDEA, but also can refer to children covered by Section 504 of the Rehabilitation Act or who have been identified as academically gifted. Another term used, that means the same thing, is children with special needs.

**ESY:** Extended School Year. ESY services are special education services that are provided at no cost to students *beyond the normal school year* when necessary to ensure that a student receives a FAPE. These services are based on the specific goals and objectives of the child's IEP and therefore must be individually designed and put in place to meet the child's needs.

**FAPE:** Free Appropriate Public Education. This is the major entitlement of the special education law for every child with a disability. "Free" means that the education and services provided to the student must be provided at no cost to the parents. "Appropriate" means an education that allows a student to make reasonable progress. "Public Education" means that the services must be provided either by the public schools themselves, or under the direction and supervision of the public school system if the services are provided by a private school. In other words, if the school district does not have a program that meets a specific child's needs it must pay for a program that does.

**FBA:** Functional Behavior Assessment. An FBA is the process of collecting data to analyze the reasons for a student's misbehavior. Put another way, an FBA is used to understand the function of a child's behavior. A good FBA will help the teachers see the triggers for the misbehavior; then they can change things around to minimize the triggers. An FBA includes the following steps: identify and define the problem behaviors; collect information on when the behaviors occur, what is happening around the child when the behaviors occur, and what occurs in response to the behaviors;

analyze the data and develop a theory regarding the function or purpose of the behavior. Following the completion of an FBA, the team should develop a Behavioral Intervention Plan (BIP) that will call for changes to be made to allow the child to meet his needs (i.e., the function of the behavior) without breaking school rules. For more information on FBAs see the DPI Exceptional Children [website](#).

**504 Plan:** A 504 Plan is a plan for how a school will accommodate a person with a disability. The plan should be guided by the need to provide full access to the school to a disabled student. Put another way, the accommodations should prevent the disability from getting in the way of a student being fully included in the educational setting. 504 Plans are required by a federal law that protects people with disabilities from being discriminated against by schools that receive federal funds.

**IDEA:** Individuals with Disabilities Education Act. This is the federal special education law. Under the law, any state that accepts federal money to help it pay for special education services must assure that every child with a disability be provided with a free, appropriate public education and that all the other requirements of the law are met.

**IEE:** Independent Educational Evaluation. An IEE is an evaluation conducted by a qualified psychologist or other professional who is not employed by the school district. It can be used to supplement the results of the evaluation conducted by the LEA. Parents have the right to an “independent educational evaluation” at school district expense if they disagree with the evaluation done by the district.

**IEP:** Individualized Education Program. The IEP is a written plan for each child with a disability who qualifies for special education under the IDEA. The IEP outlines the special education program for the student and must be developed by an IEP team prior to the delivery of special education and related services. The IEP must include certain information and must be reviewed annually (though it can be reviewed more often).

**LEA:** Local Educational Agency. An LEA is a public board of education or other public authority, such as a school district, that administers public schools. A charter school that operates independently, or a charter school management organization that operates a group of charter schools, is an LEA. The LEA is legally obligated to provide special education and related services to eligible children. A private school is not an LEA.

**LRE:** Least Restrictive Environment. The LRE is the school setting that allows a disabled child to be with nondisabled children for as much of the school day as is possible while also allowing the child to make reasonable progress. A “restrictive” environment is one that separates a student from her nondisabled peers (sometimes referred to as “general education” or “regular education” peers). When children are unable to learn or make reasonable progress in a general education classroom (or are too disruptive to others in the classroom trying to learn), then they may be removed to a classroom for disabled students for some or all of the day. The setting (or “placement”) is determined by the IEP team and documented on the student’s IEP. The IDEA says that children with disabilities should be in regular settings if possible. That means that every IEP team must first consider how a child could be supported in a regular classroom before deciding to place her in a special education classroom.

**MTSS:** Multi-Tiered Systems of Support. MTSS refers to a system for overall school improvement. It relies on using data about students to help teachers make sure everyone is learning. The data about an individual student’s learning can be a part of the eligibility decision for special education, especially for the category of specific learning disabled.

**OAH:** Office of Administrative Hearings. In North Carolina, the OAH handles special education due process cases. Cases filed at OAH proceed much like formal lawsuits. OAH hires Administrative Law Judges (ALJ) to hold due process hearings.

**OSEP:** Office of Special Education Programs within the U.S. Department of Education. OSEP is responsible for administering and enforcing the IDEA (and other federal statutes) at the federal level.

**Placement:** This term is used to describe the school setting of a student with disabilities. More specifically, a student’s placement refers to the *amount of time* spent with non-disabled peers during the school day. The IEP team is responsible for deciding the child’s placement. In North Carolina, the following terms are used to describe a student’s placement in a regular public school:

- Regular – 80% or more of the day with non-disabled peers
- Resource – 40-79% or more of the day with non-disabled peers
- Separate – 39% or less of the day with non-disabled peers

Other possible placements outside the regular public school include separate public school, private school, public or private residential school, or home/hospital.

**Related Services:** Related services are supportive services that allow a child with a disability to benefit from special education such as speech-language or occupational therapy.

**RTI:** Response to Intervention. RTI is a teaching method that helps a teacher focus on a student's problem areas and then offer targeted "interventions." If done properly, the teacher will closely monitor the child's "response" to the interventions by recording the child's progress. By monitoring the child's progress – or lack of progress – the teacher can adjust the interventions. RTI is used in regular classrooms; it is not considered to be "special education." A child who is in an RTI program can still be evaluated for special education; there is no requirement that an RTI approach be completed before the evaluation can begin. The data gathered during the RTI process should be looked at by the team determining eligibility to help the team understand the child's strengths, weaknesses, and learning style.

## Other resources

In addition to the information presented in Guide, many resources exist to help parents navigate the special education process for their children. The North Carolina Department of Public Instruction, Exceptional Children Division, has an extensive website. One of the most important resources there is the North Carolina Policies Governing Children with Disabilities, which can be found on the [DPI website](#). Also on the website are various other resources, including the [forms that are used at meetings](#) and information about the [dispute resolution process](#).

For information at the national level, the federal [Office of Special Education Programs](#) offers materials on its website.

The text of the federal law, the Individuals with Disabilities Education Act, and the regulations implementing it can be found on the website of the [Office of Special Education Programs' IDEA website](#).

[The Children's Law Clinic Resources and Links](#) page contains many links to other useful sites.

North Carolina parents can get information from the [Exceptional Children's Assistance Center](#) and the Parent Info Line: 800-962-6817.

[Wrightslaw](#) provides a more national perspective on parents' and children's rights.

Legal representation may be available at no cost for low income families from the following:

[Duke Children's Law Clinic](#) – 919-613-7169

[Disability Rights NC](#) – 919-856-2195

[Legal Aid of North Carolina](#) – 866-219-5262

[Children's Law Center of Central North Carolina](#) – 336-831-1909

[Council for Children's Rights](#) – 704-943-9609