

New Jersey Special Education Advocacy Guide



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New Jersey Special Education Advocacy Guide

This self-advocacy guide is to assist families of children with disabilities to navigate through the special education process.

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**Advocating and advancing
the human, civil and legal rights
of people with disabilities**

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I. Legal Authority for Special Education

The right to individualized educational programming for students with disabilities is legally guaranteed by the Individuals with Disabilities Education Act, 20 USC § 1400, *et seq.*, and its implementing regulations 34 C.F.R. § 300.1, *et seq.*, commonly referred to as IDEA. Under IDEA, every child with a disability that impacts his or her ability to learn is entitled to a “free appropriate public education” (FAPE) in the least restrictive environment. This includes special education and related services that make it possible for the child to make meaningful educational progress. Children with disabilities are entitled to the opportunity to participate in non-academic classes and activities, and entitled to access to the general curriculum, to the maximum extent appropriate. IDEA provides specific timelines and deadlines for parents and school district personnel involved in the provision of a student’s special education, as well as strict procedural rules that must be followed. In addition, New Jersey promulgated regulations implementing the special education process and the regulations can be found at N.J.A.C. 6A:14. The Department of Education maintains a copy on their website at www.state.nj.us/education.

Additionally, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, entitles children with disabilities to educational programs, services, and accommodations and applies to a broader range of students than IDEA. While IDEA is more detailed and contains more comprehensive procedural safeguards than Section 504, students who cannot meet IDEA’s eligibility requirements may be able to obtain services through Section 504.

Privacy and confidentiality, and parental access, amendment, and destruction of educational records are governed by the Family Educational Rights and Privacy Act (FERPA), 34 CFR § 99, *et seq.*

II. The Initial Evaluation Process

If a parent or guardian believes that his or her child is in need of special education services, a written request to the school district for an evaluation should be sent and is treated as a formal referral. Alternatively, school district personnel, such as a child’s teacher, may become aware through classroom observations that a child may have a disability and can make a referral to the child study team. Within 20 calendar days of the referral, the full child study team must hold a meeting with the parent and the student’s teacher to determine if an evaluation is warranted and the scope of any evaluation.

The child study team must inform the parent in writing of the decision to evaluate at least 15 calendar days before conducting the evaluation. If the parent refuses, the school district may request a due process hearing before an administrative law judge to obtain an order to proceed. If the parent agrees or the school district receives a court order, the school district has 90 calendar days to complete the evaluations, and if eligible, develop and implement an individualized education program (IEP).

The initial evaluation must consist of assessments by at least two members of the child study team, as well as any other necessary individuals. For some categories of suspected disability, the state mandates specialized assessments. A single test or procedure cannot constitute the entire evaluation, nor can standardized tests be the sole criteria. Additionally, an initial evaluation must include a functional assessment of academic performance and when appropriate a functional behavioral assessment. The evaluations must be conducted in the child's native language unless clearly not feasible to do so and must be nondiscriminatory.

The purpose of the evaluation is to determine whether the student has a disability that requires specially designed instruction, the present level of academic and functional achievement and the educational needs of the student. If the answer is the student has a disability that requires special education and related services, then the evaluation must also set forth the information necessary to create goals and objectives for the student and determine what services and accommodations are necessary to achieve the goals.

You may find the law regarding evaluations at N.J.A.C. 6A:14-3.4.

III. Special Education Eligibility

After the child is evaluated, an eligibility meeting must be held to determine whether special education services are appropriate for the child. The parent, the student (where appropriate), at least one regular education teacher, at least one child study team member who participated in the evaluation, and the case manager must be present at the meeting. The parents determine whether it is appropriate for a student to attend the IEP meeting. Additional people familiar with the child's educational progress may attend also, as well as any other individuals the parent or school district wish to attend.

If a child has one or more of the disabilities as defined by the state code, the disability adversely affects the child's educational performance and the child requires specially designed instruction, he or she is eligible for special education and related services. In order to be found eligible under IDEA, the student must fit into one of fourteen defined categories found at N.J.A.C 6A:14-3.5.

After the eligibility meeting, the district must send the parent written notice of the eligibility determination. This notice must include an explanation of how the parent can dispute the school district's findings. The parent must consent to the implementation of the initial IEP before the school district may provide services. If a parent refuses to consent, the school district may not provide services to the student and may not take the family to a due process hearing to impose services. The school district may not be held to a violation of a free appropriate public education if the parent refuses to consent to services.

The Pre-School eligibility category contains separate requirements. To be eligible for preschool services, a student must be between the ages of three and five years of age and exhibit a 33% delay in one area or a 25% delay in two or more of the following areas:

physical, cognition, communication, social/emotional, and adaptive. In addition, the child must require special education and related services.

You may find the law regarding eligibility at N.J.A.C. 6A:14-3.5.

IV. Re-Evaluation Process

The law requires that at a minimum every student receiving special education services be evaluated every three years unless otherwise indicated. Parents and the school district may request evaluations sooner than every three years when circumstances dictate. However, the school district is not required to conduct re-evaluations more than once a year. The school district must also conduct a re-evaluation prior to declassifying a student and by June 30 of a student's last year of eligibility in a preschool program for students with disabilities. However, a re-evaluation is not required when a student graduates or when the student ages out upon reaching twenty-one years of age. The school district must provide the student with a detailed assessment of functional levels in these situations. In addition, the parents and the local school district may agree that a re-evaluation is unnecessary. If a parent requests a re-evaluation, the district must complete the re-evaluation unless an evaluation was conducted within the past year. The law requires the district to complete re-evaluations within sixty days of the parent's written consent.

Re-evaluations are conducted to determine whether the student continues to be a student with a disability and in need of special education and related services. In addition, re-evaluations can be conducted to determine the student's present levels of academic achievement and functional performance and whether changes or additions to the services are needed to enable the student to meet his goals and participate as appropriate in the general curriculum.

To request a re-evaluation, a parent should send a written request to the child's case manager and a copy to the school district's director of special education. Upon receipt of the request, the school district will schedule a meeting to determine what assessments will be conducted as part of the re-evaluation and to obtain written parental consent. Upon completion of the assessments, the school district will schedule a meeting with the parents to review the results. The school district is required to provide at least ten days written notice of the date of the meeting and to provide the evaluation results to the parents at least ten days prior to the review meeting. If necessary, an additional meeting will be scheduled to revise the IEP.

You may find the law regarding re-evaluations at N.J.A.C 6A:14-3.8.

V. Independent Evaluation Process

Upon completion of the school district's evaluations, if a parent disagrees with the school district on any assessment, the parent may request an independent evaluation at the school district's expense. While the school district may request the parent's reason for requesting an independent evaluation, a reason is not required and cannot be used to delay the process. The school district must notify the parent of its intention to either pay for the independent evaluation or file for a due process hearing within twenty days of the parental request. If the

request is for an assessment the school district did not conduct, then the school district has 10 days to determine whether it will conduct its own. If the district decides to conduct its own, it must provide the parent with written notice and complete the assessment within 45 days.

If the school district files for due process then the school district has the burden of justifying its evaluation to an administrative law judge and proving why an independent evaluation is not warranted. If the school district agrees to provide the evaluation, it must provide parents with information regarding where to obtain an evaluation and the criteria. The school district must permit an independent evaluator to observe the student in the educational setting.

Upon completion of the evaluation, a meeting will be held to review the results of the evaluation. The school district may accept, reject or accept in part the results of the independent evaluation. The school district is only required to consider the information. Parents must receive the evaluation report at least ten days prior to the date of the meeting. The parent is limited to one independent evaluation at public expense per school district evaluation. Therefore, it is important for the parent to request all needed assessments at the same time because, the parent may not be allowed to amend the request at a later date. It is strongly recommended that parents make a written request to the district for independent evaluations, although it is not required under the law.

You may find the law regarding independent evaluations at N.J.A.C 6A:14-2.5(c) and N.J.A.C. 6A:14-3.4(i).

VI. Free Appropriate Public Education

The “free appropriate public education” (FAPE) mandated for all children found eligible for special education includes not only educational services to help the child progress, but also related services without which the child would be unable to progress towards the goals and objectives contained in the IEP. Appropriate is defined as a program that provides “meaningful educational benefit” to the student. The IDEA indicates the purpose of the act is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and living.” The school district is obligated to provide developmental, corrective, and supportive services necessary to help a child benefit from his or her education. Related services can include, but are not limited to, transportation needs, counseling, nursing services, and therapy services.

VII. Least Restrictive Environment

A school district must have a full continuum of placement options available in which to provide the necessary services to meet a child’s needs, from additional services within the general education classroom to home instruction to residential placement. The law requires the child to be educated in the least restrictive environment, and this obligates the school

district to educate the child with children without disabilities to the maximum extent appropriate. The law supports a preference for inclusion, where the placement is within the general education classroom with additional supports where necessary. However, the least restrictive environment is an individual determination based upon the unique needs of an individual student that necessitates a continuum of placement options.

You may find the relevant provisions of law at N.J.A.C. 6A:14-1.1.

VIII. Individualized Education Program

An Individualized Education Program (IEP) is a written plan that prescribes the special education and related services that the child will receive in order to make meaningful educational progress. In addition to explaining all of the programs and services that will meet the needs of the student, the IEP must also include information about the child's present levels of performance, goals, and objectives. The final discussion in the creation of the IEP is the discussion of placement. The question that should be asked is whether the IEP can be implemented in the general classroom. If the answer is no then the placement discussion should continue down the continuum of options until as placement is found where the IEP can be implemented.

The IEP is crafted by the IEP team at an IEP conference. The IEP team must include the child's parents, at least one general education teacher, at least one special education teacher, at least one child study team member, the case manager, a representative of the district board of education (child study team member, special education administrator, or principal) who is qualified to provide or supervise special education and knowledgeable about both the general education curriculum and the special education resources available, and any other person whom the parent or school would like to attend. When appropriate, the student should be invited to attend, and a representative from transition agencies likely to provide services when transition is discussed. After the IEP is developed, the parent must be given a copy along with a notice of the parent's procedural rights. The school cannot implement an initial IEP without written parental consent.

An IEP conference must be held at least once a year for every classified student, and the IEP must be revised as needed. A parent can request an IEP conference at any time if he or she wishes to amend the IEP. After the first IEP, a school district may implement an IEP without a parent's signature, unless the parent requests mediation or due process within 15 calendar days of the school district's written notice. If the parent files for mediation within the 15 calendar day timeline then the stay put placement and services consists of the last agreed upon IEP. If the parent files for mediation or due process outside of the 15-calendar timeline, then the proposed IEP from the school district becomes effective and is the stay-put IEP.

The law concerning IEPs may be found at N.J.A.C. 6A:14-3.7 and N.J.A.C. 6A:14-2.3.

IX. Dispute Resolution Options

Under federal and state laws, a parent has the right to disagree with decisions made by the school district and to seek recourse. Under IDEA, the parent has the right to bring a complaint

against the school district through three avenues: participating in mediation, requesting a due process hearing, or filing a complaint investigation. All three of these options are filed with the Director of the Office of Special Education Programs at the New Jersey Department of Education. The Department is located at PO Box 500; Trenton, New Jersey; 08625-0500. The request must include the student's name and address, the school attended, a description of the problem, including relevant facts, a proposed resolution, and the relief sought and a copy sent to the school district.

Although a parent is not required to do so, a parent may elect to engage in voluntary mediation with the school district before filing for a due process hearing. The state must pay for the mediation, which must be conducted by a trained, qualified, impartial mediator. OSEP must schedule mediation within 10 days of receiving the request. At the mediation, the mediator assists the parties in communicating the concerns in an attempt to reach an agreement. If such an agreement is reached, the mediator will write it down and have it signed by both parties as a legally binding agreement enforceable in New Jersey State Superior Court or Federal District Court. If no agreement is reached, the date of mediation is documented, and content of the conference remains confidential and cannot be used by either party in a later court proceeding. The parent may request that the dispute be transmitted to the Office of Administrative Law for a due process hearing, if no agreement is reached at the mediation session.

Parents of a child receiving special education services have the right to request a due process hearing before an administrative law judge (ALJ). This request is made by using the same procedure to request mediation. A due process hearing is a formal, trial-like procedure that allows both sides to present evidence and legal arguments. Both sides have the right to request information, evaluations and records from each other at least five days before the hearing. Many technical provisions exist. When filing for due process, the parent must send a copy of the request to the district. The district is then given ten days to respond to the parents' complaint. The district is given thirty days to resolve the matter prior to the Department of Education forwarding the complaint to the Office of Administrative Law. During this time the district must convene a resolution session within fifteen days of the parent's request for a hearing. Mediation may be used as an alternative to the resolution session or both parties may waive the resolution session. The resolution session is not a confidential meeting; but, if the family is not represented by an attorney, the district may not be represented.

If a resolution is not reached during the initial 30-day period, then the Department of Education will forward the parent's request to the Office of Administrative Law. The judge must issue a formal, written decision within 45 days from when the matter was transmitted to the Office of Administrative Law, which is formal and binding on both parties, and must be implemented immediately. This decision may include relief, such as making changes to an IEP or changing the educational placement, compensatory education, and reimbursement of costs incurred by parents. The parent and the school district each have the right to appeal the ALJ decision to the New Jersey Superior Court or Federal District Court.

If a child needs a speedy resolution of a dispute in order to avoid some serious harm, New Jersey law allows for emergent relief through a due process hearing. There are only four

instances in which a parent may request emergent relief. Emergent relief is reserved for issues concerning placement, interruption of services, discipline, and participation in graduation ceremonies. The parent's request for emergent relief must be through written application and supported by an affidavit or notarized statement describing the basis of the request. In order to prevail, the parent must prove that the child will suffer irreparable harm without the relief, the legal right underlying the claim is settled, the child has a likelihood of prevailing on the merits of the legal claim, and the child will suffer greater harm than the school board if the relief is not granted.

IDEA also provides for a complaint investigation procedure by which any person may file a complaint with OSEP to investigate a wrongdoing and provide for corrective action. A complaint investigation can be helpful in resolving procedural violations of law but not generally helpful in resolving substantive issues. The complaint must be filed in writing at the same address above. If the issue in the complaint is under dispute at a due process hearing, the investigation on that issue must be postponed until the due process hearing is complete. The alleged violation must have taken place within one year of the filing of the complaint. OSEP has 60 days from the receipt of the complaint to complete its evaluation and issue its findings. The State must also make mediation available as an alternative to the investigation process once receiving a written complaint. Any school district or private educational agency found to be in noncompliance with the law must develop a corrective action plan.

The law regarding the dispute resolution options may be found at N.J.A.C. 6A:14-2.6, N.J.A.C. 6A:14-2.7, and N.J.A.C. 6A:14-9.2.

X. Extended School Year

IDEA allows for additional educational programming beyond the standard school year for those students who need it. This additional education is called "Extended School Year," or ESY. The IEP team is responsible for determining ESY eligibility every year. This must be considered for every student with a disability.

To determine eligibility for ESY, the IEP team must consider a number of factors. Central to the determination is a regression/recoupment analysis that considers how much a child will regress during time away from school and how long it will take to recoup the skills if ESY is not implemented. Additional considerations may include the nature and severity of the child's disabilities, the ability of the child's parents to provide an educational structure at home, the child's rate of progress, behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with peers who do not have disabilities, the curricular areas that require special attention, and the child's vocational needs.

The type, duration and frequency of ESY services must be tailored to the individual child, and is an extension of either a portion of the IEP or the entire IEP. ESY may take the form of personal home instruction, group instruction, recreational services, or other options. Eligibility must be decided every year; receiving ESY one year does not necessarily entitle the student to ESY for the following year. If parents and the school district disagree about ESY,

parents are entitled to all of the procedural safeguards afforded to them at all times in the special education process, including mediation and the right to a due process hearing.

The law regarding extended school year may be found at N.J.A.C. 6A:14-4.3(c).

XI. Assistive Technology

An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve fundamental capabilities of individuals with disabilities with the exception of medical devices that are surgically implanted. An assistive technology service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. IDEA requires that the IEP team consider both during the evaluation for each child's special education program.

The parent may seek an independent evaluation if he or she disagrees with the district's evaluation. If the independent evaluations demonstrate that the child requires assistive technology, then the school district must consider writing the AT into the IEP.

The school is ultimately responsible for the purchasing of assistive technology, although if the parent voluntarily agrees, Medicaid or private insurance may also be used to cover the expense. If the school purchases the item, the school owns it, although the device may be used outside of the school if required by the IEP.

XII. Private School Placements

Private school placements can arise in one of three ways. First, a private placement may be the result of the IEP process. After the IEP is developed, the team may determine that there are no public school options capable of implementing the IEP. The team may then decide the appropriate placement for the child is in a private school. Second, parents may believe the program and placement offered by the district is not appropriate and remove the child from the public school system and place the student in a private school and seek reimbursement. Finally, the parents may choose to place a child in a private school for personal reasons that have nothing to do with the adequacy of services provided or offered by the school district.

If a parent plans to remove a child from the public school system and seek reimbursement from the school district for the private placement, the parents must provide the district with at least ten days prior notice of their intention to remove the child and seek reimbursement. It is strongly recommended that the notice be provided in writing. Failure to provide ten days notice, may result in a denial of reimbursement by an administrative law judge or a reduction in the reimbursement. In most instances, it will be necessary for a parent to file for a due process hearing to seek to obtain reimbursement. A parent will need to prove to an administrative law judge that the services provided or offered by the district were inappropriate. It is helpful to also show the private placement found by the parents is appropriate.

Private schools are not legally obligated to provide special education services to any individual student. However, public schools are required to locate, identify, and evaluate all students with disabilities including those attending private schools. The school district in which the private school is located is responsible for these students, not the district of residence. The school district must provide a service plan when serving a private school student describing the special education and related services being provided. A representative of the private school must be involved in the development of the plan and it must be reviewed annually, or as needed. However, children unilaterally placed by a parent in a private school are not entitled to the same level of services he or she might receive if registered in the public school district.

When a parent disagrees with a school district over the provision of services at the private school, that parent is not entitled to mediation or due process. Instead, the parent's recourse may only be through filing a complaint investigation with the Department of Education. A parent is entitled to mediation and due process when location, identification, evaluation, re-evaluation, and eligibility are under dispute.

The relevant provisions of the law for private school students are N.J.A.C. 6A:14-2.10 and N.J.A.C. 6A:14-6.1 and 6.2.

XIII. Discipline

Children with disabilities are afforded numerous protections under IDEA because the law recognizes that disruptive or problematic behavior may arise from the child's disability. IDEA also recognizes the particular harm that can come to children with disabilities when services are stopped following an expulsion or a suspension. With this in mind, the law entitles children with disabilities the right to a free and appropriate public education (FAPE) even after expulsion or suspension.

All children facing disciplinary action are entitled to the due process protections including meeting with a school administrator to discuss their sides of the story, having impartial hearings, and cross-examining the school's witnesses, all within 21 days of a long-term suspension. It is important to remember that children with disabilities are entitled to these safeguards in addition to many others.

The law makes a clear distinction between the services required for students in short-term suspension and that of a change in placement (a series of short-term suspensions constituting a long-term suspension or a suspension consisting of more than ten consecutive days). A short-term removal consists of a suspension from school of ten days or less. When a child with disabilities faces a short-term suspension, the school principal is required to provide the child's case manager with a written description of the incident and reasons for the suspension. The school district must provide all students including students with disabilities with services after five days of consecutive suspension under the New Jersey general education code.

A long-term suspension is a suspension that extends beyond a ten consecutive day suspension or a series of short term suspensions exceeding ten days that creates a pattern of exclusion and is considered a change in placement. The IEP team must convene within ten days of a long term suspension to conduct a manifestation determination review. A student may not be suspended beyond ten days without a manifestation determination meeting. A manifestation determination review looks at whether the behavior was a result of or arose from the child's disability or the direct result of the district's failure to implement the IEP. If the behavior is a manifestation of the disability then the child cannot be disciplined and must return to his or her placement. There is also a review of the IEP and the behavior intervention plan to determine whether any changes are necessary. If a behavior intervention plan does not exist, then a functional behavioral assessment must be conducted to create a behavior intervention plan. If the behavior is not a manifestation of the disability, then the child can be disciplined like a general education student, but the district must continue to provide services to special education students that allow the student to progress toward the stated IEP goals.

The school district may make a temporary unilateral change of placement if the student brings a weapon to school or a school function, or knowingly uses, possesses, sells, or solicits illegal drugs while at school or a school function, or if the student inflicts serious bodily injury. These terms are defined by the federal criminal code. In these cases, the school district must place the child in an appropriate interim alternative educational setting for not more than 45 calendar days. The alternative setting is to be determined by the IEP team, and must include access to both the general curriculum and the special services provided by the IEP. The problematic behavior must also be addressed. A parent may challenge an interim educational setting by filing for an emergent relief hearing. During the appeal, the child's placement is the alternate placement. At the end of the 45-day interim placement, the school district must propose a new educational placement, which parents may dispute through a due process hearing.

An ALJ may order an alternate placement when the school district proves by substantial evidence (defined as "by a preponderance") that the child is substantially likely to cause injury to self or others in the current educational setting. This must be determined by the ALJ, not the school district itself. The ALJ must also consider the appropriateness of the current placement; whether the school has made a reasonable effort to minimize the risk of harm, and determine that the proposed alternative placement can meet the needs in the IEP. The ALJ may order additional services or changes to the IEP before removing the student, which should be a last resort.

A child who is not classified as eligible for special education is still entitled to all of the above safeguards if the school district knew before the behavioral problem that the student has a disability. A school is considered to have had knowledge if the parent expresses written concern to school personnel that the child has a disability, the parent submitted a written request for an evaluation, or a teacher or other school personnel expressed that the child should be evaluated. If the parent requests an evaluation after the suspension or expulsion, the child is not entitled to any services until after he or she is found eligible, at which time the district must provide FAPE.

The law may be found at N.J.A.C. 6A:14-2.8 and 20 U.S.C. § 1415(k).

XIV. Functional Behavioral Assessment and Behavior Intervention Plan

In order to prevent disciplinary problems before they start, school districts have an affirmative obligation under IDEA to address challenging behaviors that impact a student's ability to learn or other students' ability to learn. School districts are required to conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan for children with behavior problems. The purpose of the FBA is to determine the relationship between a child's environment and a child's behavior. The FBA should be used to determine where, why, and when the behavior is most and least likely to occur. The idea behind the FBA is that if the environment can be changed, the child's behavior can change accordingly. A psychologist or other trained professional should conduct the FBA. The assessment should occur over multiple settings including the classroom, bus, home and other unstructured times such as lunch period and changing of classrooms.

Once the FBA is complete, the IEP team should use the FBA and, in consultation with its administrator, create a behavioral intervention plan. The behavior plan should explain the proactive and reactive measures that should be taken by the school to limit the child's disruptive behavior. It should contain the target behaviors to be addressed, their operational definitions, functions, and contexts, objectives, antecedent conditions, behavioral interventions, replacement behaviors, criteria for outside intervention, and plans for reviewing and assessing progress. The behavior plan to the greatest extent possible should consist of positive behavioral supports.

The law may be found at N.J.A.C. 6A:14-2.8 and 20 U.S.C. § 1415(k).

XV. Transition

There are several different transition points within a student's educational career. The school district has different responsibilities depending upon the particular transition point. The first point of transition is transitioning from the early intervention system to the Part B preschool program. A transition meeting is held at least 120 days prior to the child's third birthday. This allows sufficient time for the child study team to conduct evaluations, determine eligibility, and create an individualized education program, if necessary. Individuals from the early intervention system participate in the transition meeting and may attend an IEP meeting to provide additional information that may be necessary to determine eligibility and/or develop an IEP.

Other transition points occur when a student is moving from pre-school to elementary school, elementary school to middle school, and middle school to high school. Districts must conduct re-evaluations for students moving from pre-school to elementary school. Parents may wish to request re-evaluations for students advancing from elementary school to middle school, from middle school to high school, and from high school to post school activities.

The state's obligation to provide educational services to children with disabilities ends at age 21. However, the state is required to prepare the child for transition out of the public school system, whether that be to further education, employment, adult services, independent living, or any other environment. The child study team is responsible for transition planning which must be results oriented.

The IEP team must consider the child's abilities and begin preparing for his or her transition at age 14, or younger if appropriate. At this time, evaluations must include post-secondary assessments to determine where the child is heading after graduation. All children above age 14 must also be invited to participate in their IEP meetings. Additionally, regular IEP notices to the child's parent must state that transition planning will be discussed. At the IEP meeting, the team must develop a transition statement to include in the IEP as a long-range plan. The statement must be related to the child's interests and preferences.

Beginning at age 16, the IEP must include a transition plan describing the services to be rendered in addition to the transition statement. The child's interests and preferences must guide this plan. It should include the instruction plan begun at age 14, related services, community experiences, the development of employment or post-secondary skills, and, if appropriate, the acquisition of daily living skills and a functional vocational evaluation.

The school district is responsible for coordinating efforts between the agencies that will guide the child through transition. The school district must invite a representative of the Division of Vocational Rehabilitation Services (DVRS) or other public agencies to the IEP meeting. A child is eligible for DVRS services if she or he has a mental or physical impairment that constitutes a significant impairment to employment, and can benefit from DVRS services with respect to employment outcome. DVRS may not turn away a student for being under 18, because its caseload is full, or because of the severity of his or her disability. DVRS eligibility should be determined up to two years before the student's graduation. If a child is eligible for services from the Division of Developmental Disabilities (DDD), a representative should likewise be invited to plan for adult living support services.

If DVRS, DDD, or another agency fails to provide the child with the agreed upon services, the school district is ultimately responsible to convene a meeting to identify other strategies to meet the transition goals.

At least one year before a student turns 18, the IEP team must meet with the student and provide information to him or her about the rights under special education law that will legally transfer to the student at age 18. At 18, the student must receive a copy of the state regulations and procedural safeguards statement (PRISE). All correspondence is to be sent to the student, who must be invited to participate at IEP meetings until graduation and is granted all of the procedural safeguards previously held by his or her parents. However, the student may agree in writing that the parents will remain involved in the IEP process. A child with disabilities maintains the right to an education until either graduation or through the school year in which he or she turns 21 whichever occurs first.

The law may be found at N.J.A.C. 6A:14-3.7.

XVI. Section 504 of the Rehabilitation Act

In some cases, a student with disabilities does not qualify for the narrow eligibility criteria defined by IDEA. For example, a child with asthma or Attention Deficit Disorder may require certain educational modifications, but be found ineligible under IDEA. However, the student may still be eligible for services under Section 504 of the Rehabilitation Act of 1973.

To be eligible for a Section 504 services a student must have a disability that substantially limits a major life activity. Examples of major life activities are breathing, walking, caring for oneself and learning. Section 504 is broader than IDEA because the disability does not have to impact an individual's ability to learn but rather impact only a major life activity.

There is no requirement that a Section 504 Plan be a written document; however, parents may request that any services or accommodations provided under Section 504 be placed in writing. A 504 Plan is a legal document designed to develop a program of instructional services to assist students with special needs. The school district must provide the student with a free appropriate public education. A free appropriate public education is defined as providing those services necessary to provide a student with a disability with equal access to an education. The general education teacher, parent, and 504 coordinator must meet to establish a 504 Plan. The Plan should contain detailed responses to the child's needs. For example, the Plan might allow for a diabetic child to eat while in class, a child's seat might be moved to accommodate his or her disability, or a child may be allocated additional time during tests.

The law requires 504 Plans to be reviewed annually, although the review process may be informal. If the Plan is not enforced, the school district may be held accountable. A parent has the right to file a complaint with the U.S. Department of Education, Office of Civil Rights within 180 days of the event, as well as the right to mediation an impartial due process hearing through the New Jersey Department of Education. A parent may also decide to file directly in state or federal court.

The law may be found at 29 U.S.C. §794

Appendix A – Sample Letters

Request for an Initial Evaluation

Date

Child Study Team
Child’s School & Address

Dear []:

I am the [parent or guardian] of [child’s name], whose birthday is [] and who is a student in the [] grade.

I am writing because [child’s name] is not performing well in school and I believe [he or she] may need special education services. Therefore, I am requesting that the child study team conduct an initial evaluation to determine whether [child’s name] is eligible for special education and if so, what services are appropriate. I understand that a meeting must be scheduled within 20 days of receipt of this letter to discuss the nature and scope of the evaluation. Please contact me regarding the scheduling of this meeting.

In addition, I hereby give my consent for the district to conduct the evaluation. I understand that the evaluation must be completed and [child’s name]’s program must be implemented within 90 calendar days from the date of consent.

I look forward to hearing from you shortly.

Sincerely,

Sample Re-evaluation Request

Date

Child Study Team Case Manager
Child's School
Address

Dear []:

I am the [parent or guardian] of [child's name], whose birthday is [] and who is a student in the [] grade.

Despite receiving services, my child is still experiencing significant difficulties in school. Therefore, I am requesting re-evaluations to help determine what changes and or additions to [child's name]'s program are appropriate.

I understand that a meeting is necessary to determine the nature and scope of the evaluation. Please be advised that I am requesting the following assessments be included within the evaluation: []. Furthermore, I understand that the re-evaluation must be conducted upon a parent's request and the re-evaluation must be complete within sixty days.

I look forward to hearing from you regarding the scheduling of the meeting.

Sincerely,

Sample Letter Requesting Independent Evaluations

Date

Child Study Team Case Manager
 Child's School & Address

Dear []:

I am the [parent or guardian] of [child's name], whose birthday is [] and who is a student in the [] grade.

I do not believe that [child's name] is receiving an appropriate education. Therefore, I am requesting the district pay for independent evaluations to assist in determining what changes or additions are necessary for [child's name]'s program. I believe the following assessments are necessary to be included in the independent evaluation [].

It is my understanding that if the school district denies my request for an independent evaluation, it must file for a due process hearing and prove to an administrative law judge that its evaluation is sufficient and an independent evaluation is not warranted. Furthermore, I am aware that you must respond to my request within twenty calendar days. Please notify me as soon as possible whether the district will grant my request for the independent evaluation or whether a hearing will be scheduled.

Sincerely,

Appendix B – Advocacy Organizations

Disability Rights New Jersey

210 S. Broad Street, 3rd Floor
 Trenton, New Jersey 08608
 1-800-922-7233 (NJ only) or 609-292-9742
 609-777-0187 (fax) 609-633-7106 (TTY)
www.drnj.org

Education Law Center

60 Park Place, Suite 300
 Newark, New Jersey 07102
 973-624-1815
 973-624-4618 (TTY)
www.edlawcenter.org

Rutgers School of Law

Special Education Clinic
 123 Washington Street
 Newark, New Jersey 07102
 973-353-5576

The Arc of New Jersey

985 Livingston Avenue
 New Brunswick, New Jersey 08902
 732-246-2525 732-214-1834 (fax)
www.arcnj.org

Statewide Parent Advocacy Network

35 Halsey Street, 4th Floor
 Newark, New Jersey 07102
 1-800-634-SPAN (NJ Only) or 973-642-8100
 973-642-8080 (fax)
www.spannj.org

Appendix C – Resource Materials

The Right to Special Education in New Jersey: A Guide for Advocates (2004)

http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20OTL.pdf

Office of Special Education Programs

PO Box 500, 100 Riverview Plaza

Trenton, NJ 08625-0500

Telephone: (609) 292-0147

Fax: (609) 984-8422

www.nj.gov/njded/specialed/

Parents' Resource Guide to Key Changes in Special Education under IDEA 2004, the IDEA 2004 Regulations, and the Revised State Code

<http://www.spannj.org/KeyChangesResourceGuide.pdf>

www.wrightslaw.com

<https://www.parentcenterhub.org/idea/>

Disability Rights New Jersey (DRNJ) is the State's federally funded protection and advocacy system for people with disabilities. DRNJ is a private, non-profit, consumer driven organization with a mission to advocate and advance the human, civil and legal rights of person with disabilities.

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U.S. Department of Health and Human Services

- Administration for Community Living, Administration on Intellectual and Developmental Disabilities - PADD, PAVA and PAAT
- Center for Mental Health Services - PAIMI
- Health Resources and Services Administration - PATBI
- Center for Integrated Programs, through the NJ Department of Workforce Development, Division of Vocational Rehabilitation Services - ATAC

U.S. Department of Education

- Rehabilitation Services Administration - PAIR and CAP

Social Security Administration – PABSS and PABRP